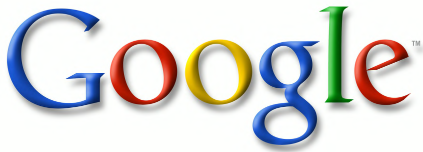

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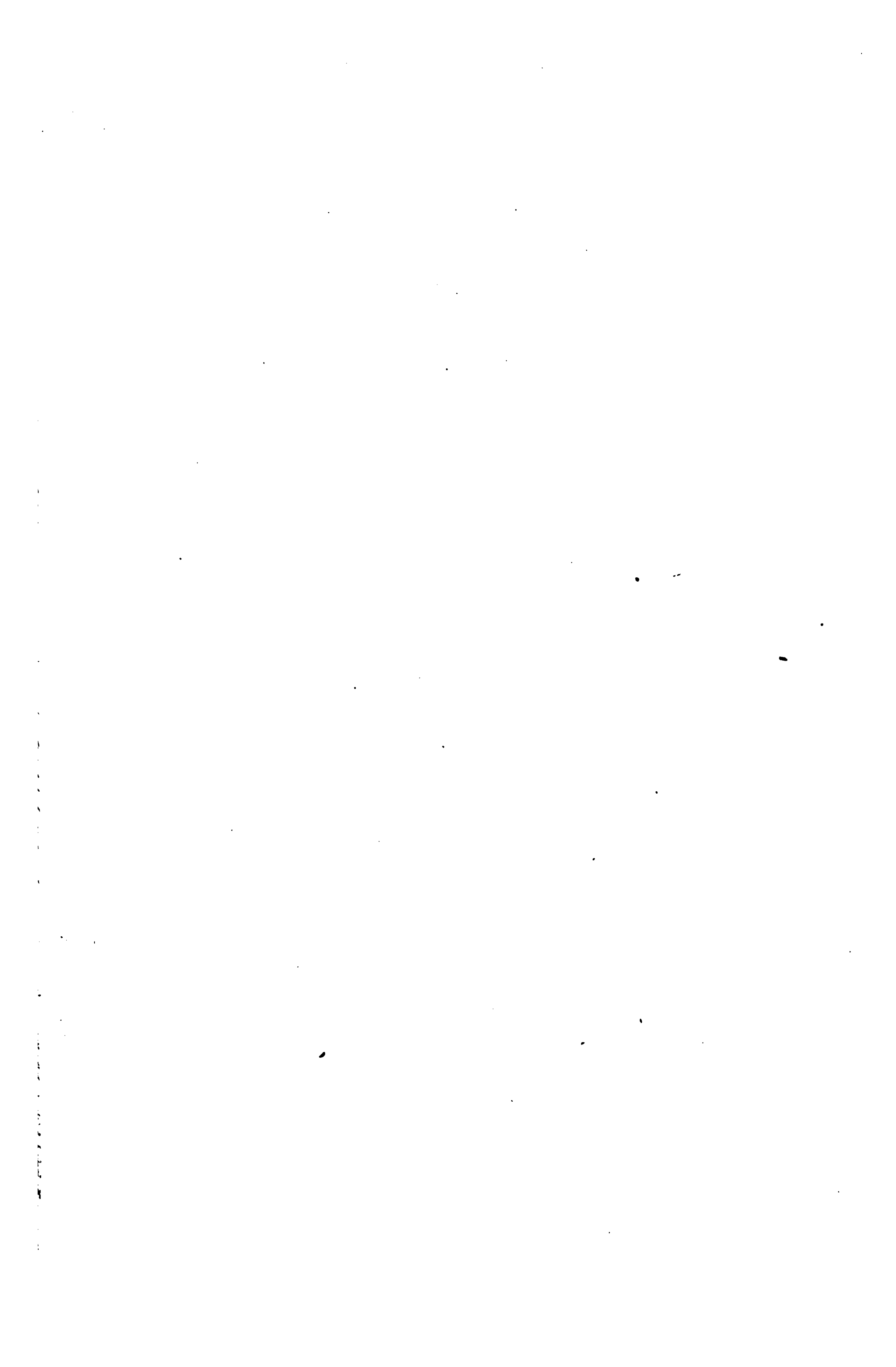

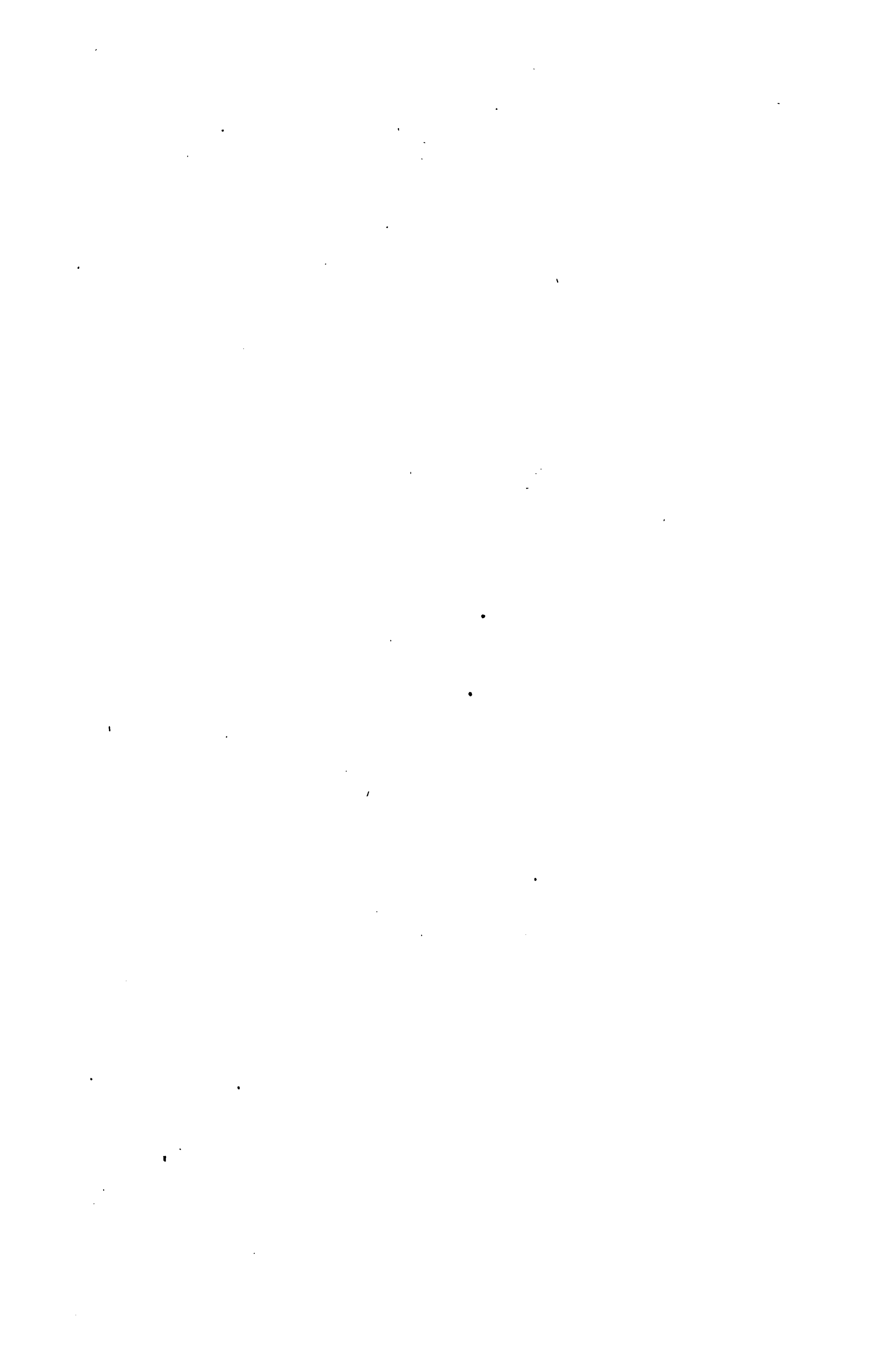

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON

H. R. 14934

PROVIDING FOR UNIFORM BILLS OF LADING

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UNIFORM BILLS OF LADING.

H. R. 14934.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Friday, March 20, 1908.

The CHAIRMAN. The special order for the hearing to-day is House bill 14934 introduced by Mr. Maynard and relating to bills of lading.

Mr. MAYNARD. I do not care to address the committee myself, but to simply introduce Prof. Williston, of the Harvard law school.

STATEMENT OF PROF. SAMUEL WILLISTON, OF BOSTON, MASS.

Mr. BARTLETT. Is there anybody here who desires to be heard in opposition to the bill?

Mr. JOEL COOK, of Philadelphia. I do not know that I am here in opposition to the bill, but I am here as a representative of the Philadelphia Board of Trade to ask for delay in the final consideration of the bill for reasons mentioned in a brief which I have.

The CHAIRMAN. Do you desire to be heard orally, or simply to present your brief?

Mr. COOK. I would like to read it, and I think but about five minutes would be occupied in doing that. It is not in opposition to the terms of Mr. Maynard's bill, but merely asking for a postponement of final action.

The CHAIRMAN. Very well, we will then hear from the proponents of the bill first.

Professor WILLISTON. In view of my connection with a bill in regard to bills of lading prepared by a body called the Conference for Uniform State Laws, and in view also of some connection I have had with drafting the bill here before you, I have been asked to present the bill on behalf of a number of bodies who are here to support it.

In order to get upon the record these parties who support the bill I will give you the names of the bodies in whose behalf I am now speaking: Bill of lading committee of the New York Cotton Exchange; New York Board of Trade and Transportation; The American Warehousemen's Association; the New York Mercantile Exchange; the Galveston Cotton Exchange and Board of Trade; the New York Produce Exchange; the National Wholesale Grocers' Association; the National Poultry Association; the Merchants' Association of New York; the American Bankers' Association; the New York State Bankers' Association; the Michigan Bankers' Association; the New Jersey Bankers' Association; the National League of Commission Merchants, and the National Board of Trade.

Before I speak of the precise provisions of the bill that is before you, for the sake of clearness I should like to occupy a few minutes in describing the methods in which business is done by bills of lading, showing in that way how the commercial bodies are interested in the questions here presented and the importance of them.

When goods are shipped to market from country points or from one State to another the shipper takes out a bill of lading, and he may take it in several ways. The nonmercantile shipments are generally made on what is called a "straight" bill—that is, a bill stating that the goods have been received from A and are to be delivered at point of destination to B. When I speak of nonmercantile shipments I mean shipments where the goods are not consigned for sale, or where it is not desired to borrow money on the shipments, or where the shipper wants to sell the goods at the other end immediately; or, where he wishes to borrow money, as he frequently does, he may take one of several courses: If he is regularly dealing with a commission merchant in a city he may very likely be content to consign the goods directly to the commission merchant by a straight bill, relying not on the bill to give him any protection, but on his contract or course of business with the commission merchant. Or, if he is unwilling to part with the right of possession to his goods so completely as this course would imply, he may take a straight bill in which he is named as the consignee as well as the consignor. The railroads then will not deliver except upon his order.

Upon a straight bill the railroad will not require the surrender of the document—the bill of lading itself—before delivering up the goods, but it will require the order of the person named as consignee; only the consignee or some one he authorizes can get the goods. So the consignor may take this course that I have suggested. But a more common course for him to take is to get what is called an order bill from the railroad at point of shipment—an order bill or what is sometimes called a negotiable bill of lading. This order bill may be to the order of anybody, either to the shipper's order or to the order of some one else. When he gets this order bill, if it runs to his own order, then he endorses it, and that document is understood by mercantile custom then to represent goods. The shipper can go to a bank with that document and borrow money on it. He frequently does this, goes to his own bank at the place where he ships the goods, discounting with that bank a draft on some one at the point of destination who is expected to receive the goods. This bank at the point of shipment then sends forward the bill of lading, together with the draft, on the proposed receiver of the goods, and the bank at the point of destination—a corresponding bank to the bank at the point of shipment—presents the draft to the person on whom it is drawn. It is expected that he will pay the draft on the faith of the bill of lading which is attached to it, and then, with the bill of lading, will go and get the goods.

Now, it is of course of the utmost importance, if this course of business is to continue, for the banks to lend money on the bills of lading and discount the drafts on the strength of the security of the bill of lading attached to the draft, and no less important for the persons at the other end who are to pay the draft and receive the bills of lading, that the bills of lading should absolutely represent the

goods; and the general purpose of the parties who are presenting and urging this bill before you is this, to make absolutely sure that the bill of lading which I have described shall represent the goods. As it is in regard to order bills of lading that these questions most commonly arise, the bill as drawn relates simply to order bills of lading, and of course in view of the limitation of the powers of Congress, it relates only to order shipments between the States.

The evils which have led these bodies to seek legislation have been generally recognized, and attempts have been made to correct them before, attempts which have in large measure failed of their full object. The evils are briefly these: It was a maxim of common law that actions on contracts were not assignable. Exception was made in regard to bills of exchange and promissory notes, but the courts have generally not been willing, as a matter of common law, to make that exception in regard to bills of lading. The result is that in regard to the contract in the bill of lading, if the carrier breaks some term of that contract, a holder of the bill of lading may have difficulty in suing the carrier on his contract if the contract was made with the shipper of the goods, not with the bank or somebody else who happens to be the holder of the document and to have advanced money on it. That is one evil that exists under the common-law situation.

Another evil is this: The common law has recognized to a certain degree that the bill of lading is a symbol of the goods, but the courts say that the possession of the bill of lading is just like possession of the goods. It might seem at first sight that that ought to be satisfactory, but it is not satisfactory for this reason: The mercantile understanding of the way in which a bill of lading is drawn is evidence of the title. It is not simply a symbol of possession. If I have a bill of lading running to my order, that to a man who is dealing with these documents is an assertion that I am the owner of those goods, or entitled to deal with them; it is the representation of a right in me. Whereas, the mere possessor of the goods may be held as a simple bailee without any right or title, or even any right to retain possession.

Now, it is important that the mercantile understanding of the effect of the instrument should be given, the effect of the law, because the parties, banks or buyers, or commission merchants, in the cities should pay the drafts, pay them and have to pay them, and have to advance money on them, on the faith of the documents. They pay at sight, and have to pay at sight, in order to carry on the business. Therefore it is essential that when a bill of lading runs to the order of A it should mean just what it means when a promissory note or bill of exchange runs to the order of A, namely, that parol evidence can not be admitted collaterally to show that A really is not interested in the instrument. Such evidence at least ought not to be admitted on behalf of anyone who has himself been responsible for the document having that form.

Mr. RICHARDSON. The courts have not held that parol evidence would not be admitted, have they?

Professor WILLISTON. No, indeed.

Mr. RICHARDSON. And there are a great variety of judicial views throughout the different States upon that matter?

Professor WILLISTON. Exactly; and that is another evil in the existing common law situation, the great diversity of views which the

courts of the several States have expressed upon the rights of parties to these instruments.

Mr. WANGER. Is not the latter part of section 20 c in direct opposition to the principle you have just enunciated?

Professor WILLISTON. It is a limitation of it. The whole of section 20 c relates to the topic to which you refer, and the first three clauses, a, b, and c, somewhat enlarge the rights which the common law gives, but we did not deem it reasonable to ask that these documents should be of such tremendous force as to wipe out an innocent title of some one who had had the goods or documents stolen from him.

Mr. WANGER. Therefore you suggest laying down a different doctrine for bills of lading than what is laid down as to bills and other negotiable paper?

Professor WILLISTON. Yes; we do not ask to go quite so far as the law upon bills of exchange and promissory notes.

Mr. WANGER. Is it not the opposite of that, to wit, that we should go much further and impose liability upon the carrier?

Professor WILLISTON. This precise question does not affect the liability of the carrier. It is primarily a question of the rights of ownership in the goods. The carrier does not care who owns the goods, so I do not think that section 20 c really helps or hurts the carrier either way, and that it is a matter of no interest to him.

Mr. WANGER. But suppose the order bill of lading is transferred by a person having possession?

Professor WILLISTON. With the consent of the owner?

Mr. WANGER. No; having possession; just as a man might get possession of a bill or note, and the railroad company, acting on the faith of that transfer of that possession, delivers the goods in accordance with the order bill of lading, and then the original owner of the bill claims that he was fraudulently deprived of that. Would not the latter clause of this provision give an action against the carrier.

Professor WILLISTON. I should say not; I should say the carrier would be protected if it delivers on the faith of the document. At any rate the carrier situation as to that, whatever it may be, would be precisely the same after this bill is passed, if it is passed, as it is to-day. What is the situation of the carrier to-day when it delivers goods on an order bill of lading presented to it, and afterwards learns that the person presenting it is a thief or it is upon fraud? Whatever that position is to-day, we do not effect it here. We are not primarily seeking to legislate in regard to the liability of the carrier at all.

Mr. ADAMSON. The only purpose of this bill, as I understand it, is to make safe and certain the transactions of the banks in handling bills of lading.

Professor WILLISTON. Not simply banks——

Mr. ADAMSON. And people who advance money.

Professor WILLISTON. People who advance money or pay money; that is, the buyer of the goods is just as much interested as the lender of the money, for bills of lading go forward with draft attached drawn either on the commission merchant who has the goods for sale and is to make an advance, or drawn on the buyer who has to pay the price; and in either case, just as in the case of the bank——

Mr. ADAMSON. To make it easy and certain that the money shall be advanced and the bill of lading handled?

Professor WILLISTON. That is it.

Mr. ADAMSON. If Congress had not been in existence before railroads were you would have been in bad shape?

Professor WILLISTON. Yes, sir.

Mr. RICHARDSON. Then, generally, you seek to put the bill of lading upon the same line of credit as commercial paper?

Professor WILLISTON. The last paragraph of section 20 c, to which reference has been made, limits that; that is, we do not ask to go quite so far as the law on bills and notes. We do not ask Congress to enact that a thief or finder of a bill of lading shall be able to give a good title, nor do we ask that a person who does not own goods, but ships them and gets a bill of lading, can transfer title by means of the bill of lading.

Mr. HUBBARD. But instead of leaving the law as it may be on that subject, you expressly legislate, do you not, by that clause, that it can not be so transferred?

Professor WILLISTON. Yes, but that, I take it, does not diminish the rights of a party under existing law to-day; that is, as the law stands to-day, such a document can not be transferred by a person who gets possession without the consent of the true owner.

Mr. HUBBARD. Suppose it is drawn through the neglect of the drawer in favor of some one, may not that person transfer it so as to give good title under the law now?

Professor WILLISTON. Yes, I should say so.

Mr. HUBBARD. Could he do that under this section?

Professor WILLISTON. I should say so; is not that done with the consent of the true owner?

Mr. HUBBARD. It is possible that the form: "Without the consent of the owner," would cover it.

Professor WILLISTON. We mean to cover consent.

Mr. HUBBARD. My inquiry was because of the statement I understood you to make that you left the law with respect to this question exactly as it is. The section as drawn would seem to me to legislate on the subject, and that the legislation might or might not be in accordance with the law laid down in the jurisdiction.

Professor WILLISTON. What I said was not to change the liability of the carrier. Section 20 c relates to rights of the transferee and the transferrer.

Mr. BARTLETT. The purpose of this bill, as I understand it, is to change the contract of the railroad when it gives the bill of lading from a contract of freight and carriage to one of guarantee that the goods have been received and will be delivered to whoever the bill of lading is transferred, or to whom it might be presented to the railroad company by, at the end of the carriage.

Professor WILLISTON. That is too strong a statement.

Mr. BARTLETT. That looks like the main purpose of it to me.

Professor WILLISTON. There is more than one purpose. The primary purpose——

Mr. BARTLETT. I said the main purpose.

Professor WILLISTON. I should question that. The fundamental purpose is to assure anyone who advances money on the faith of these documents, so far as fairly can be done, that when he buys the bill of lading he shall buy the goods and therefore secure the goods.

Mr. BARTLETT. Whether the railroad received the goods or not?

Professor WILLISTON. One element of insecurity that exists under the law at present is that the goods may never have been received at all by the carrier. If it was the carrier's fault that the bill of lading was issued without receipt of any goods, we say the railroad ought to be liable. It is liable in some States to-day, but in many States it is not liable.

Mr. BARTLETT. It is not liable by the decisions of the Supreme Court.

Professor WILLISTON. No; but liable in New York and some other States.

Now, we have drawn a distinction in section 20 i and 20 j, as the sections are labeled, between cases where a false bill—that is, a bill which has no goods behind it—is so issued by the fault of the carrier, and where it is issued without the fault of the carrier and by the fraud or fault of the shipper. We say it is fair that where the fault is the fault of the carrier's agent, and is not due to the fraud or fault of the shipper, that the railroads should stand behind it. We do say that; that is one provision of this bill.

Mr. BARTLETT. It could be a fraud upon the railroad and upon the public in the event that another innocent holder should get the bill of lading, and it would be a fraud for the railroad to issue a bill of lading for goods not received, would it not?

Professor WILLISTON. Yes.

Mr. BARTLETT. You say that you do not make the railroads liable in those cases?

Professor WILLISTON. I say I make it liable where the bill of lading is issued through the neglect of the carrier and not by fraud or fault of the shipper. To illustrate, if the shipper makes such representations in regard to goods, what he has in a car, and relying upon those representations the railroad agent issues a bill of lading, then the railroad is not liable upon that; but if the agent of the railroad company, knowing he has received no goods, nevertheless puts out of the bill of lading of the corporation that employs him, we say that the railroad ought to stand behind that bill of lading.

Mr. BARTLETT. How could he do that without the connivance of the man to whom he gave the bill of lading?

Professor WILLISTON. He could not do it without the connivance, and we propose to make the railroad responsible to an innocent holder of that document in any case where the railroad agent is guilty of fraud; in other words, the fact that the shipper was also guilty of fault does not excuse the fault of the railroad company when it is the innocent holder of the document that is suing the railroad.

Mr. BARTLETT. I do not think then that the statement I made that the bill proposes to change the contract evidenced by the bill of lading from one of freight and carriage to one of guarantee by the fact that the goods have not been received was too strong.

The CHAIRMAN. Let me see if I understand the scope of this proposed measure. Take a case of an obscure railroad station where there is very little traffic, and where under ordinary circumstances an inferior man would be the station agent. Under the provisions of this bill would it be possible for that man, in conspiracy with another, to issue, we will say, a dozen bills of lading of $20,000 apiece, purporting to authorize shipments and deliveries to, say, twenty different commercial cities?

Professor WILLISTON. Yes.

The CHAIRMAN. It would be?

Professor WILLISTON. That would be possible.

The CHAIRMAN. Under such circumstances what defense, if any, could a carrier make to those frauds?

Professor WILLISTON. It could defend against those frauds if they were order bills of lading, and the defense would be this; that that station agent was not authorized to issue bills of lading at all.

The CHAIRMAN. Well, I am assuming that it is a station where there was a little business.

Professor WILLISTON. Or, that the holder of the document was not a holder in good faith for value. In the case that you suppose, if a dozen bills of lading for $20,000 worth of goods each had been issued, and somebody had paid $20,000 on the faith of those bills, we ask: who should bear that loss of $20,000 each, the man who has paid the money on the faith of the bills which the agent of the railroad company authorized to issue such documents has issued, or the railroad who employs the agent?

Mr. ADAMSON. You can not afford to allow the responsibility of the railroad company to vary with the size of the station, or to make it less where there is an insignificant agent.

Mr. STEVENS. Wouldn't this be the effect, that the railroad company would necessarily be obliged to restrict the number of stations where they would have a man with authority to issue bills of lading, thus scattering the business of the country and discriminating against the small places?

Professor WILLISTON. I do not feel that way about it. I think the railroads would do the business that was presented to them.

Mr. MANN. Is there anything in the bill that would require a railroad company to issue an order bill of lading?

Professor WILLISTON. No; there is not.

Mr. BARTLETT. There is in the interstate act, is there not?

Mr. MANN. Not an order bill of lading.

Professor WILLISTON. No.

Mr. MANN. They are required to issue bills of lading, but they could refuse to issue an order bill under this act.

Professor WILLISTON. They could.

Mr. ADAMSON. If the shipper or holder puts an order on it, is it not an order bill of lading anyhow?

Professor WILLISTON. That is one of the frauds that is commonly committed, a fraud which we seek to guard against in some of the provisions of this bill which have not yet been alluded to. The fraud is this, that the railroad company originally issued a straight bill and then the railroad will deliver the goods to the consignee named in that bill without demanding the surrender of the document.

Mr. ADAMSON. If the railroad company is acting the fool and doing that, do you think we ought to interfere and restrain them?

Professor WILLISTON. The railroad company is not acting the fool——

Mr. ADAMSON. It seems to me that the railroad should look for the paper before it lets the goods go.

Professor WILLISTON. They are not obliged to; the law to-day is that the railroad company is not obliged on a straight shipment to take up the paper, and that rule of law we do not seek to alter, be-

cause with the large number of small nonmercantile shipments it would congest the business of the country seriously, we are informed and believe.

Mr. ADAMSON. Yet there is no legal question involved in that situation that has not been covered by law for generations.

Professor WILLISTON. That is, in the case where the bill is altered?

Mr. ADAMSON. Where they turn loose their goods without demanding the bill of lading, and somebody else afterwards appears with it. That presents no new question of law.

Professor WILLISTON. Do you mean a straight bill?

Mr. ADAMSON. I do not care what you call it. The railroad has got to answer for that to some party.

Professor WILLISTON. And the answer the law makes to that question is this: If the shipment was a straight shipment, the person is the consignee, but if the bill of lading is an order bill of lading the person is the holder of that document.

Mr. ADAMSON. If you assign a bill of lading to me I certainly have a right to those goods, no matter what you call the bill of lading. If somebody has preceded me and fraudulently gotten the goods, then the question of my remedy, I think, is already covered by law without any new legislation.

Professor WILLISTON. I beg pardon, but you are mistaken. It depends upon whether it is a straight bill or not that you have advanced your money on.

Mr. BARTLETT. There are bills of lading now in existence that are called bills of lading "order notify;" that is, to notify the shipper. That is a common form; and the railroad gets notice that the bill of lading has been transferred and therefore the title to the property is out of the original consignor and in somebody else. And if the railroad, after having received the notice that the bill of lading which represents the goods is in the hands of some one else, then delivers the goods without the surrender of the bill of lading, the railroad is liable and ought to be.

Professor WILLISTON. That is the consequence in an order bill of lading.

Mr. MANN. Under the law as it now stands, the shipper who goes to the railroad agent is entitled to receive a bill of lading, and that bill of lading will provide for the shipment to a certain person, either himself or some other person. He has no right to demand that it shall be to the order of some one.

Professor WILLISTON. But in fact the railroad does.

Mr. MANN. In fact the railroad company will issue any bill of lading to the order of some one else, but mark it "Not negotiable."

Professor WILLISTON. It has been the habit of railroads to have such bills marked "Not negotiable," and it has been the custom—if I may say a little as to what railroad attorneys say in regard to that—to put the "Not negotiable" on; that it is put on not to affect the rights of buyers or people who advance money on that, nor to affect the obligation of the railroad to hold the goods for the person who presents the document, not to deliver them simply to the consignee as on a straight shipment. The object is to avoid statutes which have been passed in some States, notably New York and Pennsylvania, making it a criminal offense for a railroad to deliver goods without

the surrender of the bill of lading, unless the bill of lading is marked "Not negotiable." The railroad attorneys said to themselves: "That is easy; we can protect ourselves from ever being criminals, and we will make all bills 'Not negotiable.'"

Mr. MANN. But if this bill should pass they could not mark an order bill of lading "Not negotiable?"

Professor WILLISTON. They might mark order bills of lading "Not negotiable"——

Mr. MANN. But it would be a violation of law. Of course they might do it. The law provides that they shall be negotiable, and it would be a violation of the law to mark them "Not negotiable."

Professor WILLISTON. Does it provide that they shall not be so marked?

Mr. MANN. I do not know whether it provides that they shall not be so marked, but it prevents the railroad from making them not negotiable.

Mr. STEVENS. That will be found on page 8 of the bill.

Mr. ADAMSON. If they were to be negotiable, and the railroads were to mark them "Not negotiable," it would be a violation of law.

Mr. MANN. You want to make them negotiable. They are in fact now negotiable, though not legally so; but, as a matter of fact, they are negotiable, excepting that the railroad company is not legally responsible if it delivers the goods by mistake.

Professor WILLISTON. I beg pardon, even on these bills running to order, though they are marked "Not negotiable," the railroad is liable, and if it delivers the goods without taking up that bill of lading——

Mr. MANN. But are they legally liable?

Professor WILLISTON. That is the prevailing view, and railroad attorneys representing large interests, with whom I have spoken, say that their object in putting those words on the bill of lading is not to evade responsibility for requiring the surrender of the document.

Mr. MANN. I did not say that it is not to evade responsibility, but is it not to evade legal responsibility? Are you familiar with the bill that was before us several years ago?

Professor WILLISTON. I have seen it, but I had no part in drawing it, and my memory now would not be accurate as to its provisions.

Mr. MANN. The reason that bill was urged at that time was that the bills of lading not marked were not negotiable, and hence there was no legal liability on the part of the railroad.

Professor WILLISTON. Of course when a railroad gets in a tight place and is sued, it sets up all defense with which it thinks it has a chance, and this provision would undoubtedly under certain circumstances be used by a railroad.

Mr. TOWNSEND. And do you not think it would be successfully used?

Professor WILLISTON. No; I do not.

Mr. TOWNSEND. I would like to have you explain that, why you do not think it would be a bar.

Professor WILLISTON. The bill of lading in ordinary use to-day provides, even though it is marked "Not negotiable"—they are all marked that. If the words "order of" are written on this bill, the bill of lading, before the goods are delivered, must be surrendered;

and it is the uniform practice of railroads to require these order bills delivered, and I think it would generally be held that there is very little actual decision on it.

Mr. KENNEDY. The words "Not negotiable" in that case would be inconsistent with the terms of the bill itself?

Professor WILLISTON. It seems to me that they are fundamentally inconsistent with the terms of the bill.

The CHAIRMAN. Let me suggest that we allow Professor Williston to proceed. We are leading him away from the line of his argument, and he does not get back to it.

Professor WILLISTON. If I may add one single word more in regard to this particular matter. The Interstate Commerce Commission has had before it all winter a project in regard to a new uniform bill of lading, but a bill of lading which was presented to the Interstate Commerce Commission last October, on behalf of all the northeastern railroads and a number of shippers, and assented to by a number of other railroads, did not contain the words "not negotiable" on the order bill. It has been a great bone of contention between the shippers and the railroads whether those words should be put on. The shippers thought they ought not to be, because they at least caused confusion, and the railroads of the eastern classification territory—that is, the northeastern part of the United States from Chicago east, and north of here—assented to that form; but I think there is no doubt that the form of bill of lading which it is expected the Interstate Commerce Commission will promulgate will not have those words on it, and that what has been the practice, and a mischievous practice, I think, of the railroads in regard to this matter, will not be continued.

I was speaking in regard to some efforts that have been made previously to meet the evils which we are seeking to meet by this bill. Some States have passed laws to this effect in general: That bills of lading shall be negotiable like or in the same manner as bills of exchange. A bill of lading is not exactly like a bill of exchange, and you can not make it exactly the same, and those statutes have been interpreted variously, and have not had the effect that I think it is certain their framers intended. The Commissioners of uniform State laws is a body of commissioners the individual members of which are appointed by the several States, and they meet annually and try to promote uniformity of legislation, especially in regard to commercial law. The negotiable instrument law is their chief monument at present. That has been passed in two-thirds of the States, including most of the important States. They have had under consideration a bill in regard to bills of lading, and they will undoubtedly recommend such a bill. I have been engaged in drafting it, but this is a subject which can not really be adequately covered without the aid of Congress. The subject is one of interstate commerce in the main, and legislation by Congress in regard to bills issued for interstate commerce shipments would undoubtedly lead to a proper result in the main in regard to intrastate shipments. It is for that reason that we are not satisfied with such legislation as may be obtainable in the several States.

If I may now say a single word in regard to the separate provisions of the bill; they are all aimed to cover what we believe to be an existing evil, and they all have for their fundamental purpose the greater

certainty of title. But before calling attention to these specific sections I would like to call attention to two misprints in the bill as it is before you. On page 3, line 19, after the word "freight," the word "and" should be inserted, so it shall read "freight and charges" instead of "freight charges." On page 4, line 4, the word "transfer" should read "transferror."

Mr. MANN. And a comma after that, I suppose?

Professor WILLISTON. Yes.

Mr. MANN. Then how would that read?

Professor WILLISTON. "Without notice of any defect of title of the transferror or infirmity in the instrument itself."

On page 8, line 3, after the words "not negotiable," insert "or words of similar import."

I have further to say that the gentlemen for whom I am appearing have concluded to recommend the omission of the whole of section 20 g, on page 5, "Liability as warrantor." There are difficult questions involved in regard to that section, and it seemed better not to attempt to legislate in regard to it. Of course striking out that section will result in a change of numbering in the following sections.

Now, if I may, I will hastily run through the separate sections: 20 a simply defines the order bill in regard to which we are seeking legislation. It is a bill running to order, and relating to interstate shipments. We also request that it shall be required that the words "order of" shall be prominently printed on the bill before the name of the person who is consignee. The reason for requiring that is to prevent one of the commonest and easiest ways in which frauds have been committed. As I have already said, there is a great difference in the legal effect of a straight bill and an order bill. Now it is an easy thing to do, the way bills of lading are issued to-day, hastily perhaps, for a holder of a straight bill to put "or order" afterwards. Then he goes to a bank and borrows money on that bill of lading, which the bank thinks is an order bill, but the railroad, having on its books record of a straight bill having been issued, will only deliver the goods at the other end to the consignee, or some one whom he directs, without waiting for the document, so that the bank finds that it is a straight bill and the goods have been delivered to somebody else. Then again fraud is readily committeed in this way: As railroads do not take up straight bills generally, any business man is likely to have in his possession a lot of old straight bills, and sometime when he gets in a tight place he may do as a man in Baltimore did, take a lot of those straight bills, alter the dates slightly, put the words "or order" on, and go around to a bank and get $100,000.

Mr. ADAMSON. Is he in the penitentiary?

A VOICE. No; he is in Alabama. [Great laughter.]

Mr. RICHARDSON. I wish you would give us his name, and we will send him back to Baltimore.

Professor WILLISTON. That is only one instance, of course. The general situation is that you have a document on which millions of dollars are being advanced drawn in a way which would not be tolerated in regard to stock certificates.

Mr. BARTLETT. What would be the difference if some person had forged any other instrument—a note, or a mortgage, or anything else—presented it to the bank, and gotten $100,000 on it?

Professor WILLISTON. No difference whatever; but the question is, Is it worth while to have instruments drawn so carelessly that forgery is easy, or is it desirable to have them drawn so that forgery is difficult?

Mr. ADAMSON. Especially when Congress is asked to perfect a man's imperfections.

Professor WILLISTON. We do not ask quite that, but where some imperfections can be remedied it is a helpful function of Congress.

Section 20 c, as to who may transfer a bill of lading, contains its chief essence in the subparagraph headed c, that is, "any other person to whom the possession or custody of the bill has been intrusted by the owner or bona fide pledgee thereof, if at the time of such intrusting the bill is indorsed to such person, or in blank by such owner or bona fide pledgee, or is drawn to the order of such person." The law as it generally exists at present, although the law of the States is in some conflict in regard to this, is just as I may intrust my horse to you, and if you sell it to a bona fide purchaser, I may go around to the bona fide purchaser and say "That is my horse," and take it away from him. So if I intrust a bill of lading running to order to you, indorsed in blank, and you get money on it, sell it or pledge it, I may go around to the buyer or pledgee of it and say that I only intrusted it to that person of whom you bought it for a particular purpose—that there was no real authority. Now, we say that a person who intrusts such paper voluntarily to another ought to stand for the consequences if the person intrusted sells or pledges it. We do not go so far as the law of bills and notes, since we expressly provide in the paragraph at the end of the section that we do not propose to enable one who has acquired possession of such a document without the consent of the owner to be able to give a good title. The original owner may reclaim the property or the document in such a case.

Section 20 d provides for the transferree of such a document, an order bill of lading, acquiring the contract rights which the shipper made with the carrier. As I said at the outset, under the law at present it is doubtful whether a holder of a document can sue on the contract contained in the bill if that contract was made with the shipper and with the shipper only. We did not want that. Then as to the property rights, the transferree of the bill of lading gets not only the contract rights on the bill, but he gets such property rights as the person to whom the bill was issued had, or anyone to whom he has transferred it. That you will notice does not enable anyone who has not title to the goods to take out an order bill of lading and transfer a good title to the goods by means of the bill of lading when he could not to the goods themselves. In this respect also we do not seek to go to what might be called the extreme limit of negotiability in regard to these documents. We have tried to make a bill that was fair to all interests.

Mr. BARTLETT. What do you mean by a "spent" bill of lading?

Professor WILLISTON. A spent bill of lading is one after the goods which were shipped under it have been delivered.

Section 20 e perhaps requires no comment.

Section 20 f makes it a crime to negotiate a bill of lading when the shipper of the goods had not title to them. We have not thought it reasonable to deprive the original owner of his title to the goods in such a case, but it does seem as if it ought to be made as difficult as

possible for this sort of a transaction to occur, and therefore we ask that it be made a crime for a person who does not own goods to ship them on an order bill of lading and then go around and negotiate that bill of lading for a valuable consideration.

Section 20 g goes out as it was printed, and what is printed as section 20 h will become 20 g. It simply requires the surrender of the order bill of lading, which is the practice of the carrier now; but it also provides as to a matter in regard to which the law is in conflict as it stands to-day. Suppose an order bill is issued and while the goods are in transit the bill of lading is sold. There the law is clear that if the railroad delivers to the consignee originally named in the bill it will be liable for reversion to the holder of the document; but the law is in conflict if the purchase of the bill of lading is after the goods have been delivered by the carrier. The carrier delivers them to the consignee named in the order bill of lading, and does not take up the order bill. The railroad is delivering the goods to the person entitled to them, but that is a very improper thing to do from a mercantile standpoint, for the order bill of lading is left outstanding to deceive the community, and we say that the carrier ought to be liable for the consequence of leaving the order bill of lading outstanding.

Mr. Esch. But it is not a common practice?

Professor Williston. No, I should not say it was.

Mr. Esch. The house would send its dray down to the depot and get the goods, and the order bill would become a spent order in the course of the banking hours.

Professor Williston. Of course I am speaking of a condition where the bill of lading is not surrendered, and because the railroad does not require its surrender it is left outstanding in the hands of some one who may afterwards negotiate it, sell it to some one who does not know that the goods have been delivered. I do not think that that is common for the railroads to do. They do it sometimes, but they do not mean to do it. It is neglect when they do do it, and they recognize that. It is intended to be made a criminal offense in some States, and the railroads have thought to avoid those criminal statutes by putting the words "not negotiable" on the bill.

The next two paragraphs have already been discussed in replying to questions, namely, the case where a railroad issues bills where there are no goods behind them. I will not further discuss those questions.

Mr. Townsend. I would like to ask you one or two questions in regard to section 20 i. As I understood you, there might be collusion between the shipper and the railroad agent when bills of lading were issued and there were no goods.

Professor Williston. Yes.

Mr. Townsend. Now is it possible for a shipper to deceive the railroad by bringing boxes there supposed to contain certain things which it is found they did not contain at all, and the railroad had issued a false bill while possibly doing it in good faith?

Professor Williston. Section 20 j is intended to protect the railroad in that case.

Mr. Mann. In that respect is it entirely different from the former bill that was advocated before this committee?

Professor Williston. Entirely so. This bill in several respects has been entirely changed from that bill in order to meet what seemed to be just objections.

Mr. MANN. The old bill made the railroad company indorser, guarantor, and warrantor, not only of the quality, but of the amount of the goods.

Professor WILLISTON. The old bill went too far, unquestionably, for fairness.

Mr. MANN. Have the banking people and the commercial people abandoned the idea of securing that legislation?

Professor WILLISTON. Yes; it seems to them that the line of distinction which this bill draws between the sections 20 i and 20 j is the line of distinction of justness, and they are satisfied with that.

Section 20 k, as it is printed on page 7, provides simply that an altered bill shall have the same effect that it originally had. This is to avoid the common-law rule that material alteration makes absolutely void the altered document. We simply say it shall have the same effect it used to have before it was altered, and the railroads have no objection to that rule. Section 20 k has special reference to the form of bill that has been alluded to by members of the committee—what is called a bill of order notify. That is an order bill on which the words are written, notify such and such a person. A question has arisen whether some one who advances money on such a bill can be called a purchaser in good faith, whether he does not have notice that the person to be notified has such an interest in the goods as to make it improper for money to be advanced. The way in which those bills are issued is this: If a shipper sends such a bill forward with a draft, and the person to be notified is not to be entitled to the goods until he gets money, the bank which serves as intermediary, which advances the money, has no reason to suppose that the person to be notified has any interest until he pays the draft which the bank discounts.

Section 20 m provides against the insertion of terms inconsistent with the provisions of this act, and especially in regard to the words "Not negotiable." We think that the great bulk of the railroads before the Interstate Commerce Commission have already conceded this point to the shippers in regard to the form of bill in general use, but the Interstate Commerce Commission does not concede that it has the power to legislate absolutely as to the form of bill of lading which railroads shall use. They only have power to recommend, and as some railroads may continue this practice it is desirable for us, even though the Interstate Commerce Commission recommends, as we think it will, a form of bill of lading in which this printing of "Not negotiable" does not appear—it is desirable for us to have these words not allowed, or made void, if they are put in. They are contradictory to the face of the bill. The way to make a "Not negotiable" bill is to make a straight bill, and the railroad has that recourse completely in its control.

Mr. ESCH. Do you state that the Commission has only the power to recommend?

Professor WILLISTON. That is their feeling.

Mr. ESCH. Under the Hepburn Act did we not give the Commission power to prescribe a just and reasonable regulation or practice to be observed by the railroads in the future?

Professor WILLISTON. There is a question that has been very elaborately argued before the Commission, whether that provision of the Hepburn bill enables the Interstate Commerce Commission to say

to the railroads: "This is the form of contract you shall make with the shipper, and only this form of contract." It is the opinion of the Commission—I spoke to Chairman Knapp about it yesterday—that they have not the power under that provision that you refer to. Of course time does not permit going into an argument here as to whether the Commission is right or not in that view, but that it is the view I can speak with certainty.

Section 20 n is in order to avoid hardship upon the carrier as to the two cases where property may be taken out of the hands of the railroad, even though the order bill of lading is outstanding. It excepts those cases from the provisions of the document.

Mr. MANN. Have you considered the constitutional questions involved in this bill?

Professor WILLISTON. We have, and we believe it is constitutional; and we are going to distribute to the committee a printed brief or statement, appended to which is an opinion of Henry W. Taft, of New York, on the question of constitutionality.

Mr. MANN. I see that; but of course here you go a great deal further than fixing what a bill of lading shall be.

Professor WILLISTON. Yes.

Mr. MANN. Then if you should follow this up, and this act should be constitutional, Congress would have the power to legislate, where a man sells goods, regardless of how they are transported, to regulate with reference to the draft that shall be issued, the form of the check, the legal liability of both parties, notwithstanding any provisions in any State law?

Professor WILLISTON. Whatever may be true as to all of those points, it has seemed to us to be true at least that Congress had the constitutional power to enact as to the legal effect, the legal nature, of the bill of lading issued in interstate shipments.

Mr. MANN. On the ground that it is dealing with interstate commerce?

Professor WILLISTON. Yes.

Mr. MANN. Then upon the same ground they could enact legislation which would regulate anything connected in any way with interstate commerce, the payment of bills for goods shipped in interstate commerce, or sold in interstate commerce, and perhaps regulating the methods of banking and the issuance of drafts.

Professor WILLISTON. My own belief is that these questions which you speak of become questions of degree, that the connection of such things with interstate commerce may be so remote that Congress would not have the power, but I should think it might be true as to some of the points you have made.

Mr. ADAMSON. Do you not think that the efforts we have made in the last eight or ten years to induce railroads to accept freight and passengers and carry them with dispatch and without discrimination is sufficient, so that we can rely upon commercial laws generally to take care of these things without burdening the railroads with these restrictions?

Professor WILLISTON. After a discussion with some of the railroad attorneys I do not think most of these provisions are at all opposed to that; I do not think so from my limited consideration of this bill.

Mr. ADAMSON. I understand you. This, of course, does not consider the question of transportation, the furnishing of cars in good order, demurrage, or anything else, excepting an outside provision arranging for shippers to run their banking affairs and get credit on bills of lading without endangering anybody.

Professor WILLISTON. That is one way of putting it. Another way of putting it is that it relates to the largest single matter perhaps of interstate commerce in regard to which Congress can deal. The whole product of the country is carried to market in this way, and it is very important to see that it is done right.

Mr. STEVENS. The courts have held that the insuring of such goods would not be an integral part of interstate commerce.

Professor WILLISTON. Yes; but I think that is too remote.

Mr. MANN. You do not undertake to regulate the form of the bill of lading excepting in one or two particulars?

Professor WILLISTON. No.

Mr. MANN. But most of your bill is directed to the legal effect of certain acts in connection with bills of lading which are now the subjects of control in the various States?

Professor WILLISTON. The legal effect of the document itself?

Mr. MANN. Not the legal effect of the document merely, but the legal effect of what somebody does with the document.

Professor WILLISTON. That, it seems to us, is the legal part of the document. The negotiability of a promissory note is something inherent in the note.

Mr. MANN. Do you think that Congress has the power to regulate by an act the negotiability of promissory notes that are given in payment of purchase in interstate commerce?

Professor WILLISTON. I should doubt that. I should think the connection with interstate commerce was too remote.

Mr. MANN. I do not quite see the distinction.

Professor WILLISTON. The distinction, it seems to me, is one of degree, and it seems to me there is a distinction.

Mr. MANN. Would it be possible to provide by Congressional enactment a form of bill of lading which would cover all of these questions?

Professor WILLISTON. Simply provide the form?

Mr. MANN. And the provisions of the bill of lading.

Professor WILLISTON. It would not. The courts of some States will hold that if you and I make a simple contract and agree that a third person shall have certain rights, a court of equity will not hold that he has that right.

STATEMENT OF HON. JOEL COOK, PRESIDENT OF THE PHILADELPHIA BOARD OF TRADE, AND MEMBER OF THE HOUSE OF PENNSYLVANIA.

Mr. COOK. Mr. Chairman, the remarks of the learned professor in his explanation of this bill, and the various questions and comments that have been made, have demonstrated that this is rather an abstruse and difficult problem. The Philadelphia Board of Trade has had this matter before it for several years, because they have been very intimately connected with the efforts that have been made to get a

uniform bill of lading, which, in the more recent procedure, has been under the auspices of the Interstate Commerce Commission. And for that reason they have asked me, as their president, to come here and address you on the subject.

The Philadelphia Board of Trade, at a quarterly meeting held March 16, by resolution requested that I should attend your meeting and give expression to its views in reference to H. R. bill 14934, having for its object placing an order bill of lading on a more negotiable plane.

The committee on inland transportation of the board has carefully considered the provisions of the measure and approved generally of the principles embodied therein, but for the following reasons was not prepared to endorse it nor to urge at this time its favorable consideration.

The Philadelphia Board of Trade has uniformly advocated the adoption by Congress, or under its authority by the Interstate Commerce Commission, of a bill of lading, uniform in its conditions, for all interstate transactions, and with each and every provision fair to the carriers and just to the shippers.

The board has steadily abstained from advocating or opposing legislation upon this subject, deeming it wise to await an agreement between the members of the conference of shippers and transporters, inaugurated under a suggestion of the Interstate Commerce Commission following an informal hearing on the subject of a uniform bill of lading, at Chicago, on December 5 and 6, 1904.

In response to a notice from the Interstate Commerce Commission, asking the Philadelphia Board of Trade to be represented at a public hearing upon the subject of a uniform bill of lading, a letter was sent from which I submit the following quotation:

> The Philadelphia Board of Trade acknowledges receipt of the order of your honorable Commission of July 8, 1907, relating to the approval and adoption of a proposed form of bill of lading submitted as the result of a substantial agreement between the shippers and all railroad companies in official classification territory after a series of conferences and meetings upon the subject, prompted by your honorable Commission as a result of a hearing before you in December, 1904.
>
> While the form of the proposed bill of lading may not be such as would have been drafted by the carriers or shippers acting alone, nor does it increase the liability of the carriers to the extent originally aimed at by the shippers, yet its proposed form undoubtedly represents the conservative conclusions of both sides of the controversy and may be considered a wise and just solution of the discussion, not unfair to the carriers and reasonably satisfactory to the shipping public.
>
> This view of the case being entertained by this board of trade, no objections to the proposed form of bill of lading were filed on September 16, 1907, under the terms of your order; but you are hereby petitioned to approve and prescribe the form of bill of lading as presented in your order with such minor alterations as may appear, after the hearing of October 15, 1907, to be needed to more fully carry out the purpose and spirit of the principle of the obligations of such an agreement.

At this hearing every railroad was represented, as also were the shipping interests. Some modification in the form of bill of lading under consideration was suggested, but no definite conclusion was reached.

It is fully expected that the Interstate Commerce Commission will shortly hand down a decision upon this question, and the board of trade feels that in justice to all interests affected no legislation upon

the subject should be enacted until the views of the Commission shall be promulgated and fully considered, as the form of the bill of lading virtually, in a great measure, is a large factor in deciding the responsibility thereunder.

The recommendations of the committee of the board have met with the approval of the organization, and I therefore ask on their behalf that you will give same your consideration in any action you may take upon the bill you have now before you.

In connection with this subject Mr. Cook presented the following paragraph from the last report of the Interstate Commerce Commission:

UNIFORM BILLS OF LADING.

A very important proceeding is pending before the Commission which is expected to lead to the adoption by the railroads of the country, upon the recommendation of the Commission, of a uniform bill of lading. This proceeding was originally instituted in November, 1904, upon the petitions of the Illinois Manufacturers' Association and other trade and commercial organizations in official classification territory, complaining of the proposed enforcement by the carriers in that territory of certain changes in the so-called uniform bill of lading then generally used. After hearing, the Commission suggested the appointment by the carriers and shippers represented of a joint committee to devise a suitable form of bill of lading and report the same to the Commission. Such a joint committee was appointed, and, after numerous conferences at which the matters in question were given careful consideration, reported to the Commission, on June 14, 1907, a proposed uniform bill of lading. The petitioners and substantially all carriers in official classification territory having agreed upon and consented to the bill of lading form so submitted, the proceeding was thereupon enlarged to include carriers and shippers throughout the United States by an order calling upon all carriers subject to the act to show cause why the proposed form for bill of lading should not be approved and prescribed by the Commission as a just and reasonable regulation or practice to be observed by them in the future. In accordance with the Commission's order, objections to the proposed uniform bill of lading were presented to the Commission at a public hearing held on October 15, 1907. The entire record in this proceeding is now under consideration by the Commission, and a report in connection therewith will be made at the earliest practicable date. It is believed that carriers generally will adopt and put into use the bill of lading recommended by the Commission and that much practical benefit will thereby result to the shipping interests of the country.

Adjourned at 12 o'clock noon, to meet again at 2 o'clock p. m.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Friday, March 20, 1908.

AFTERNOON SESSION.

The Committee met at 2 o'clock p. m., Hon. William P. Hepburn (chairman) presiding.

The CHAIRMAN. The special order is the bill H. R. 14934, relating to order bills of lading.

Mr. NEVILLE. Professor Williston has not returned as yet, and awaiting his appearance, Mr. Droste has quite an interesting document to show to your committee, and if you will let him present his side of it pending the arrival of Professor Williston, it will save time.

The CHAIRMAN. Very well, we will hear Mr. Droste.

STATEMENT OF MR. CHARLES F. DROSTE, REPRESENTING THE NEW YORK MERCANTILE EXCHANGE.

Mr. DROSTE. Mr. Chairman and gentlemen, the Committee has listened to Professor Williston. The matters he has discussed have been brought to the attention of the commercial body I represent, the New York Mercantile Exchange, and the bill was read to them, and they approve of the features of the bill so far as they are represented in that bill, and I have a resolution from the Mercantile Exchange approving the matters contained in that bill. I wish personally, however, and for the exchange, to present to the committee some features which have not as yet, I think, been brought out in relation to these bills of lading, as they are at present being issued by the railroad companies, and not only at the present time but as they have been issued for years past, in a very lax, slovenly, and careless manner, which has entailed on the merchants of New York and other States very great losses. I come away now entirely from the bankers' situation as to the advisability of the transaction from the legal standpoint. What I wish to dwell upon is the importance to the merchants of New York who accept drafts against bills of lading that they shall be secured, and feel secure, that the railroads have actually received what they give a receipt for.

Two particular cases have come under my personal observation of loss, one quite recent, as late as October 22 of the past year, the papers of which I hold in my hand. Here is a bill of lading for 300 tubs of butter consigned to the order of a firm in Chicago. It says "Notify Droste and Snyder, New York." Two of these bills of lading were attached to a draft amounting to $10,200. By virtue of this piece of paper, which is a clean receipt, and which by the way has not the words "Not negotiable" stamped upon it, we pay the draft as it is presented to us, for $10,200. One of the cars arrives and the other does not arrive in due time. In place, however, of the car arriving, we receive the following telegram from the agent in Chicago who signed this bill of lading: "You are hereby notified to refuse payment of draft accompanying the car, bill of lading No. 644, dated the 23d, issued to order Emerson, Marlow & Company. Notify Droste & Snyder, 300 tubs of butter, as goods will never reach you."

The CHAIRMAN. You received that after the payment of the draft?

Mr. DROSTE. After the payment. The railroad bill was signed on the 23d of October, and on the 26th I received this.

Mr. ESCH. There was a delivery of the full consignment to the company?

Mr. DROSTE. I am coming to that directly.

Mr. ESCH. Very well.

Mr. DROSTE. I telegraphed back to Mr. Winthrop, who is the authorized and the principal agent of the Wabash Railroad in Chicago. You see you can not bring in the plea that he is an ignorant man, and all that; he is the principal man in the city of Chicago representing the Wabash Railroad. I telegraphed, "Draft was paid on the 25th. Where are the goods? How are they detained? Give full particulars." That telegram was sent two days after I received the bills of lading. I have never been vouchsafed the first word of explanation in reply to that telegram in regard to that 300 tubs of butter on

which I paid the draft, until last week, when the rather indefinite explanation came to me that the goods had been replevied, but with no particulars whatever as to who replevied them or who had the right in the property, giving us no opportunity to defend our right to the property, or to do anything whatever. Whether they had been replevied or not I do not know. I asked the agent over the telephone "When were these goods replevied?" Certainly not before this firm failed, because it really did not become known until the 27th that they had gone into the bankruptcy court. "What, then, was this car doing in your yard which was signed for on the 23d of October, what was it doing in your yard on the 27th, when it should have been in New York at that time?" He said "I can not answer that question; I do not know." This is a case where the claim is that these goods had been replevied, and that may open a question. An exactly similar bill of lading was signed by the same agent of the same company on the same date, "Order of Independent Beef Company, Philadelphia, Pa., 300 tubs butter." A draft of $5,100 was drawn against that and accepted by the Philadelphia Beef Company, and the goods have never appeared, and no claim has ever been made as to that that they were not received by the railroad company.

Those are only two cases. There could be dozens of cases cited of the same kind. I have another case which was settled three or four years ago with the Northwestern Railroad where, in Fairmont, Minn., the agent signed for, we will say, 240 tubs of butter and 160 cases of eggs. I can not give you the exact particulars of this case. The agent signed that bill of lading. The shipper placed that bill of lading with the draft into the bank, and the bank forwarded it to us, and we, on the integrity of that bill of lading, accepted the draft against it. When the bank in Fairmont, Minn., found that we had accepted the bill of lading and paid the draft, they shut down that man's credit out there and protested his checks that he had issued for property which was going in these cars, because a note came due which he was not prepared to meet, and they charged it to his account. We, however, held this bill of lading. The shipper, wishing to protect us against the attachment by local creditors on this paper he had issued, rushes this car forward. He tells the agent to close this car and ship it forward partly loaded. We never received one word of advice until the goods reached New York, and when the car reached New York the actual value of the stock was $1,600 short of what we had accepted against. The goods had never been loaded. I took steps to collect it and put in my claim, and the railroad company refused to pay it, and said they would stand suit on it; and, on examination of the law of Minnesota, we found that if we brought a suit in Minnesota the court would hold that the railroad company was not responsible for the act of that agent signing for what he did not receive, whereas if we brought the suit in the State of New York the railroad company was responsible. We did bring that suit, and the railroad company could not transfer that into a Federal court because of the amount being $1,600, and consequently the case had to be tried out in the State of New York; and all the decisions were in our favor, but they were particularly anxious at that time for another test case, and I think that I being a friend of the vice-president they thought I was a good subject for a test, and we started

the suit and they entered demurrer, and we beat them in that; but at that time it was lawful to direct one's own business, and I directed that all my business be shipped over another road, and in three weeks I had my money.

What I want to show, however, is the obvious reason why these agents at various points issue bills of lading to a shipper without receiving the goods. It is an accommodation to that shipper, assisting him to finance his business, and it has the effect of drawing a large lot of business to that particular road that is willing to do it. You can no longer give rebates, but you can give a little advantage here and a little advantage there, under our present laws and interstate commerce acts, and this is a custom that is creeping in, circumventing the law, allowing these shippers these advantages in order for this particular road that is willing to do it to draw all this business to its center away from competing lines. I said to these people "If you do that thing here, I do not know whether it is lawful or not lawful, but we will refuse to hold the bag as we have done in this case." We handle these bills of lading for what they read, what they are supposed to contain. Now, the point that the exchange particularly wishes to make, and I personally wish to make, is this. Personally we are not so much interested. We are interested in all the features with which the bankers are trying to surround this bill of lading as to the point of safety, but in addition to that we want, and we think the bill contains it, a provision making it a misdemeanor for a railroad employee to sign for goods which he does not actually receive, first of all in the order bill of lading, because the order bill of lading to a merchant is as valuable a certificate of property as he can possibly have. The people with whom we are doing business are all supposed to be in good credit. If we have any doubt of them as to their existence, as to their being bona fide, we do not accept their drafts, but if they are bona fide shippers of goods with whom we are doing business, we accept these papers as evidence that they have shipped these goods.

Mr. LOVERING. Had you any previous experience with him?

Mr. DROSTE. We were doing a very large business with this particular shipper.

Mr. LOVERING. Had you had any experience with such a case before?

Mr. DROSTE. This was one case, and I had another, two years ago, and there are numerous cases.

Mr. LOVERING. And in the meantime you went on paying those drafts just as though you suspected nothing?

Mr. DROSTE. Yes; that is the custom of the country on which business is established, that we must accept drafts against bills of lading.

Mr. ADAMSON. Would it be satisfactory for each railroad to adopt a banking attachment so as to finance all its shipments?

Mr. DROSTE. I know nothing as to what the connection of the bank is with the shipper.

Mr. ADAMSON. The railroads used to have their own banking institutions and they were both railroad and banking institutions. The Central Banking and Railroad Company of Georgia ran for half a century.

Mr. DROSTE. I know nothing of that, but I know that there are hundreds and thousands of shippers in Ohio, Indiana, Illinois, Minne-

sota, Nebraska, Oklahoma, Indian Territory, Kansas, and Missouri who ship on these bills of lading and draw upon us for the value of the property. We handle these bills of lading as bona fide and correct, and we trust entirely to the integrity of the railroads that when they say "Received, 300 tubs of butter," it means that they have received that much butter.

Mr. STEVENS. Do these bills of lading describe the car by number?

Mr. DROSTE. Yes, sir. This is an entirely correct bill of lading, without even the words "Not negotiable" on it.

Mr. STEVENS. Would it help any in the railroad tracing these things or protecting themselves for the law to require a duplicate bill of lading, one to accompany and the other to go to the railroad company itself, by which it then would have the power to trace these cars under its system of car tracing?

Mr. DROSTE. The railroad has that now. That copy goes on the way bill with all the particulars that the way bill contains. The railroad does not deny that they issued this particular bill. It was an order bill of lading. In another case I had a straight bill of lading, consigned straight through without any S. L. & C., meaning "shippers load and count," or anything of the kind.

Mr. LOVERING. There are often three bills of lading.

Mr. DROSTE. Yes; for export business there are always three bills of lading; but for our own line of business there is only one bill of lading. We can obtain a duplicate by applying for it, but we do not favor the duplicate, because that opens again the liability of both the duplicate and original being negotiated. Of course whoever took the duplicate would do so at his own risk.

Now, this contains the protective feature. We do not ask anything strenuous or unreasonable from the railroad company at all, but we ask this protective feature, that the railroad agent who signs a bill of lading without having received the goods shall be held to have committed a misdemeanor, because he becomes, knowingly or unknowingly, willingly or unwillingly, a party to a fraud; and I do not see why the commerce of the United States should not have that protection, so that if a man does that, not the railroad but the law itself will put that man in jail or fine him, and the moment you put that protection upon it your agents will be very loath to place themselves under the possibility of being sent to jail simply for the purpose of influencing goods to their station; and there is no other reason that the railroad agent could have to enter into a compact with the shipper of that sort. For instance, if a shipper ships 20 carloads of stuff a week, and all this stuff comes over this road, we will find when he fails that he owes that road for freight. Every bill is marked "Prepaid," and when he fails we find that he owes them $25,000 for unpaid freights. They issue these bills and then the merchant goes to the Union Trust Company of Chicago, and they discount the paper for him because he is a man of good standing, assuming on that bill of lading, for instance, that there have been 300 tubs of butter shipped. There actually has been nothing shipped, but he takes that money and procures the goods and ships them, and then along comes the money for the goods, and it is all right provided he does not fail.. In this case he failed, and we are trying to get the money back, trying to get some information as to what has become of our butter, and they do not even give us that information. Now,

the protection we ask, the protection that is contained in this bill, will very materially lessen the liability of any such fraud as that being committed, knowingly or unknowingly. Whether the railroads themselves permit this we do not know, but if the agents themselves are doing it for the purpose of influencing business to their stations, we should not suffer from it. Some of the competing lines suffer. It is an irregular procedure, an irregular piece of business, and if it is within the power of Congress to regulate it I hope they will do it.

Mr. TOWNSEND. Your bill does not, of course, as I understand it, intend to force the railroad company to issue an order bill of lading?

Mr. DROSTE. No.

The CHAIRMAN. If you attach provisions to an order bill of lading, will not the railroad refuse to issue any at all, and simply issue straight bills of lading, as you call them?

Mr. DROSTE. For our purpose, straight bills of lading are as valuable as order bills of lading, and for that matter, I want to introduce another point, that the straight bill of lading is as valuable for my business as an order bill of lading. It means exactly the same thing; it is an evidence of goods consigned and shipped either to me or to my firm. In either case I am willing to lend money upon it. I loan that money in order to finance the shipper's business. This business runs into enormous volumes. I deal simply in butter and eggs. On our exchange we deal in poultry, the total value of which amounts to $100,000,000 annually. Of that $100,000,000 I am quite safe to say that not less than $90,000,000 is advanced by us merchants upon bills of lading three, four, and five days before we receive the goods.

Mr. TOWNSEND. Is it not possible for the bankers of this country to get together and say that they will not accept and discount any bills of lading unless they do conform to certain conditions?

Mr. DROSTE. Unless the bills of lading conform to certain conditions?

Mr. TOWNSEND. Yes.

Mr. DROSTE. There again you enter upon the field of commercial competition, and where one bank would do it another bank would not do it. It is just as it is in the case of the railroads. One railroad will not permit its agents to do anything of the kind. Another railroad might not see it so clearly, and might permit its agents to do it. The interstate commerce law forbids the doing of the very act they do, but they are doing it. Who is going to bring them up before the bar of justice? Nobody in particular. Meantime the railroads get the benefit of it, and we are the sufferers.

I am no lawyer, but simply a plain business man. I am talking to you without regard to what may be possible from a legal standpoint. I am only presenting to you the standpoint of a business man who advances the money upon a receipt from a responsible railroad company saying that they have received so and so. If I am in good standing as a merchant and I go to you if you are a banker or if you are a private citizen, and say "I have so many goods at my private warehouse"—a right to 500 bales of cotton, we will say—"which I will give you a bill of sale for and I want you to lend me some money on them," if you trust me you will accept that bill of sale and loan me the money on them. Of course that simile is not really a good one. But here is a public carrier, a public servant, which issues a bill; it is responsible, and it issues a bill that it has received something

from the man who draws upon me. The railroad company knows that he will draw upon me. That occurs in every day business. But although the railroad issues this receipt, it has never received those goods. They hope to receive them, there is no question but what they all hope to receive them, and as long as nothing happens, it is all right, and there is no trouble; but the moment something happens they turn around and say "We are not liable in Minnesota," or in this State or that State, "although we are liable in New York and in Illinois," or in anyone of half a dozen other States where the cases have been tried.

Mr. CUSHMAN. Would it interrupt the gentleman if I would call attention to one particular case right in line with what he is stating?

Mr. DROSTE. Not at all.

Mr. CUSHMAN. I call this case to the attention of the committee and the other gentlemen here because it seems to me to be very apt. This occurred in my own State of Washington, where there is a large amount of shingle business, and the almost universal method of shipping shingles is that the man will put his shingles in the car, get his bill of lading from the railroad company, attach it to a sight draft, and send the draft and bill of lading to the party in the East, and immediately upon the receipt of the draft and bill of lading they pay the draft and hold the bill of lading, and get the shingles afterwards. Now, a few years ago in our State the Northern Pacific Railroad had a small station at Ravensdale, Wash., and an agent in charge, named McIntyre, entered into collusion with a man by the name of Doucett and issued a bill of lading on a carload of shingles to the value of about $326, and Doucett sent that East to a firm named Roy & Roy. Of course the shingles never arrived, as there had never been any shingles. Then Roy & Roy, the parties who paid the draft and lost their money, brought suit against the Northern Pacific Railroad and their agent for having issued a bill of lading when no property was in existence. I wanted to call the attention of the committee to what the court said in denying the parties relief. I will read from volume 42, Washington Reports, page 572.

Mr. ADAMSON. Did you say they did not actually put them in the car?

Mr. CUSHMAN. The shingles never had any existence at all.

The court said:

> It is true that the authorities above cited sustain appellant's position, still we find that the English courts. the Supreme Court of the United States, the Federal courts generally, and many of the State courts have, in numerous well-considered cases, announced an entirely opposite doctrine, which we will now announce as the law of this State. Where a transportation company shows that merchandise was not actually received by it, and that a bill of lading has been issued by its agent, either through fraud or mistake, the Supreme Court of the United States, since followed by other courts, has held that, as the receipt of the goods lies at the foundation of the contract to carry and deliver, there can be no such contract unless the goods have actually been received, and that an agent of the carrier has no authority to issue a bill of lading without actual receipt of the goods, and can not bind the carrier, even as to an innocent transfer or pledge of the bill of lading.

I wanted to call the attention of the committee to that because it was a case which seemed to me to be right in line with the subject under discussion.

Mr. ADAMSON. Did not the Washington law punish the rascals that got up that scheme and got the money?

Mr. CUSHMAN. Yes; but this fellow Doucett was insolvent financially. My recollection is that they divided the money and disappeared.

Mr. ADAMSON. They got away?

Mr. CUSHMAN. Yes.

Mr. ADAMSON. But Congress could catch them?

Mr. CUSHMAN. No; that is true.

Mr. DROSTE. But in these cases no such conditions exist. In these cases the railroad agent issues these bills of lading for no personal gain for himself, but in order to bring business to the railroad. He draws the heavy business of that shipper whom he favors, to that railroad, by offering him this accommodation.

Mr. ADAMSON. As I understood your remarks just now, they went right along in the business loading the cars, and while in the process of loading the cars this bill of lading was issued?

Mr. DROSTE. No; there were two bills of lading issued on the 23d of October. In one case the goods were partly loaded and were attached by replevin on the 27th of October, five days after the bill was signed and two days after I paid the draft on them. If the railroad company in Chicago signs a bill for 300 tubs of butter today, it is their duty to forward that butter at once to me, and they have no business to carry it in their yards for five days.

Mr. ADAMSON. If it was a case where the agent in his line of business was actually having a car loaded, and only prematurely signed the bill of lading and let it go out before the car was completed, that might be a different matter.

Mr. DROSTE. No, that was not the case here. He signed this before he had any goods, and nothing was ever known of it until this man failed, and then these particular cars had not been loaded.

Mr. ADAMSON. If you could show that the railroad authorized and encouraged that kind of business——

Mr. DROSTE. Oh, I have been through that. We do not want to be obliged to go through that. That is why we come before you gentlemen, to have you relieve us of that burden. I would rather try to prove almost anything than to try to prove a thing against a railroad; but there is no question about it. Whether the higher officials of the railroad knew that I can not say, but the agent himself admits it when he sends me this telegram which I have read, three days later. He assumes there to tell me what to do. He says "You are notified not to accept." What business has he to notify me about any business, unless he feels himself responsible for what he has done? Then he never even condescends to tell me where the goods are, or whether he ever had them, or anything about it.

Mr. LOVERING. You have been going on receiving goods ever since from the same sources and on the same bills of lading?

Mr. DROSTE. Over the Wabash road?

Mr. LOVERING. Yes.

Mr. DROSTE. There is a point, again. I notified a number of my correspondents that I would no longer receive bills of lading over the Wabash Railroad, and the result was that other merchants were willing to do so and I lost the business. I lost probably many cars of stock which originated along the line of the Wabash road. And that

is always so; if we refuse to pay a draft, somebody else that has not been hurt, and does not know what danger they are up against, pays the draft. We have no protection whatever against a false bill of lading of this character, and what we ask of Congress is to so protect us that it will be a criminal offense for an agent to sign for 300 tubs of butter or one case of eggs until he comes into actual physical possession of that butter or those eggs.

Mr. ADAMSON. It seems to me that a little enforcement of the criminal law is what you need.

Mr. DROSTE. Oh, I wish we could send them all to jail, including the man who asks an agent to sign such a bill of lading; but if we have to go to law about it it takes an interminable time to reach any conclusion.

Mr. ADAMSON. It would surprise me if a close investigation did not disclose sufficient law in almost every case, in every State, to punish those who took part in those transactions. In our State, if they had such a defective law, we would have an extra session of the legislature at once.

Mr. DROSTE. This is something that does not affect any particular class only; it is something that affects the entire commerce of the country. It affects the honest man, because he does not want any stigma on the bill which he issues, and this will protect the dishonest man.

Mr. ESCH. You state that these goods that are shipped, for instance, from a Minnesota point, using your own case, are shipped and the agent gives a bill of lading against the goods where they are not yet fully received in order that his road might get an advantage over a rival road which does not do that.

Mr. DROSTE. Yes, sir.

Mr. ESCH. Do you not think that that practice is reached by section 3 of the interstate commerce act? Section 3 reads as follows:

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Do you not think that reaches it?

Mr. DROSTE. Yes, sir.

Mr. ESCH. If that be true, then on complaint before the Interstate Commerce Commission might not that practice be discouraged if not entirely abolished by ruling of the Commission?

Mr. DROSTE. I think so. I said that was the obvious purpose of the agents in doing this. I have not proven it.

Mr. ADAMSON. If it is due to the rascality of the persons, I do not suppose there would be any discrimination between persons and localities, would there?

Mr. DROSTE. No, sir.

Mr. ESCH. No; it is where one party is willing to give receipts for bills where the goods are not fully received while the other party is not. He said one agent to get business would give that favor.

Mr. CUSHMAN. One agent of one company?

Mr. Droste. One agent of one company. If the other agent of the other company does the same, it equalizes itself, and there is no particular pull on either side. But that is the evil; and it is set up to us merchants to locate that particular fault. It may be a case involving only $1,600; or, as in the cotton trade, for instance, it may involve hundreds of thousands of dollars. But we do not like to go into the Minnesota court from New York to determine what that agent has actually done. It would be up to us to prove what he has done; and after all, it is merely obvious that that is why he did it. We do not know that that is the reason why.

There is another point, and I do not know whether it is in this bill or not, namely, the imperfect attesting to a bill of lading. I think that is very important. It may not lie in the province of this committee but may be in the province of the Interstate Commerce Commission to prescribe the form, but it is very important that the bill shall also bear the stamp of that railroad office. That is simply an additional safeguard. Anyone may sign that agent's name, but anyone may not have access to that office and that stamp. The dates are frequently written in in such an illegible manner that we can not tell what the date was. Bills are made out with pencil, and without any regard to correctness at all. This bill of lading here may show 300 tubs of butter, and by a simple stroke you can make 350 of it. It should be written out "Three hundred tubs of butter." The bill should be made out in ink and not in pencil. I have known of a case where 17 cases of eggs were shipped originally, and the number was not written out but simply the figures were in the bill, "17," and the figure "4" was placed before the "17," so that it made "417" cases; 417 cases were drawn against, and the merchant in New York lost the difference, because the railroad never received but 17 cases and never signed for but 17 cases, and the rest was a fraud, and the man who got the money left for Europe. The fault there was that the number of cases was not written out. If it had been written out it would not have been so easy to make it four hundred and seventeen cases instead of seventeen.

All this discussion has been on order bills of lading. As a matter of fact, all bills of lading are as important as order bills of lading. I think this original bill was probably largely followed by the bankers who treat it largely as a matter of security for their advances. They do not go far enough in the matter. Drafts are issued against bills of lading by thousands of little creameries throughout the United States which get their bills of lading, consign their goods to Droste & Snyder, or whatever firm they are dealing with, and attach to the bill of lading a draft. A straight bill of lading is as valuable as any other, but we again want to make sure that when it says 300 tubs of butter the agent has received that much butter; we do not want it to mean that that butter will be received next week or whenever the man chooses to ship it. The railroad having taken possession of it, if they have received it, they do not deny the responsibility. If they have receipted for it without having received it, for purposes of their own, they deny the responsibility. In the meantime we treat that bill as a true statement, and believing what they say is true, that they have received this butter, we pay out our money for it.

As far as the straight bills of lading go, it may be possible to offer a few changes and amendments to the bill that is before you.

I do not know now whether it is possible or feasible, or whether I can get the consent of the people who have drawn this bill, but I consider these amendments very important.

Mr. NEVILLE. We all want to do what is best for the commerce, and we will take any suggestion that anyone makes.

The CHAIRMAN. We will hear you on any branch of the subject you desire to discuss.

Mr. DROSTE. Thank you. I would like to offer amendments to House bill No. 14934, adding at the end of section 20a, on page 2, after line 10, the following:

> If a bill of lading for the transportation of property as aforesaid shall not be or purport to be drawn to the order of any person, it shall be known as a straight bill of lading.

This is simply defining the difference between a straight bill of lading and an order bill of lading. Before that the order bill of lading is defined, and now this defines what is known as a straight bill of lading, which is exactly as valuable a paper as an order bill of lading to a merchant.

Then on page 6, line 7, and page 7, line 2, line 9, and line 13, after the words "an order," insert the words "or a straight;" the idea being to make applicable to a straight bill of lading all the provisions of the act that are applied to an order bill of lading. I think these interlineations will cover it. That is as far as we have examined it. We want to make this applicable to all bills of lading of this character. I hope the committee will seriously consider the matter of having a stamp of the company stamped on the bill, and also of having the bill drawn in ink instead of loosely drawn in pencil as it is drawn now. I presume that it is not necessary to read the resolutions from my board of trade.

Mr. LOVERING. I would like to ask you incidentally whether you think the effect of this bill will be to expedite the delivery of the freight?

Mr. DROSTE. To expedite the delivery of the freight?

Mr. LOVERING. Yes; would it have any effect on that?

Mr. DROSTE. I do not see where it would effect it at all. The railroad companies are desirous of delivering promptly, and they do deliver freight as rapidly as possible.

Mr. LOVERING. They do not seem to deliver cotton as rapidly as possible.

Mr. DROSTE. I am speaking of my line of goods, of course. They carry the highest rate of freight of any products, and they are shipped by fast freight lines. They are very valuable goods. A car of goods is worth from $3,000 to $5,000, and the volume of that is enormous, and it is highly necessary that those goods shall come through in quick time; if not, the railroad is liable for causing damage by delay in transit.

Mr. ADAMSON. We may have to allow for considerable delay and provide for several weeks of demurrage while the railroads are looking after the owners of these goods and looking after the banking end of it.

Mr. DROSTE. There is never any trouble of that kind, to find the owner of the goods, because the owner is mentioned really on the bill. That is, the consignor notifies so and so. Now, the bank in the course

of its business receives an order bill of lading with the draft attached, and it immediately sends that to the party to whom it is addressed.

Mr. Adamson. Do you not think in the natural course of business, in the natural course of events, that men who do so many millions dollars' worth of business as you, and the bankers who transact so much business, ought to take their part of looking after the rascals that commit these frauds, simply to help catch them and prosecute them?

Mr. Droste. Then we ought to have the laws.

Mr. Adamson. The law is no good unless you enforce it. The trouble with you is that instead of hiring lawyers and prosecuting these people and putting them in jail, you come to Congress and ask them to do something.

Mr. Droste. No, sir; I am hiring lawyers right along, but I can not do anything because one State says one thing and another State says another. Here is a public corporation, a public servant. They know exactly what they are doing; they are trying to get the goods from the point of shipment to the point of delivery. When they issue that receipt for the goods that are to be shipped, why do they not receive the goods? Nobody asks them to issue a receipt without receiving the goods except some rascal, or a person they want to accommodate.

Mr. Adamson. With all due respect to you, I do not believe there is a State in this Union where the laws are not sufficient to punish both the man who gets the receipt from the agent without delivery of the goods and the agent who issues the receipt without receiving them.

Mr. Droste. All right; then I ask relief from you. Here is $5,000 involved in this case, and it costs me $5,000 to get it.

Mr. Adamson. Very well; if I leave Congress I would like to have a fee from you, and I will get you. There are plenty of lawyers in the country in the meantime who want your fee, too.

Mr. Droste. My colleague, the president of the Mercantile Exchange, states it similarly. To quote his own remark, he says when you have a lot of goods on the railroad, and the railroad sends you word it is there, you send your truck after it, and you give the railroad your receipt for 100 cases of eggs, for instance, and your truckman puts on only 98 cases, and some dago comes along and steals the other two cases. You only receive 98 cases, but my receipt is given for 100 cases, and the railroad will never give me relief, because they have my receipt for the 100 cases.

Mr. Adamson. If Congress attempts to look after all that sort of thing, it will be busy.

Mr. Droste. It will not, because we will never dispute it. If I catch my man doing that he commits a crime, but we cannot fasten it on the agent of the railroad company that he has done anything of that kind.

Mr. Adamson. If, according to your statement, he conspires with your fellow, he is guilty.

Mr. Droste. How am I going to prove it?

Mr. Adamson. Either he is guilty, or the railroad is liable.

Mr. Droste. If the railroad is made liable there will be less of that done.

Mr. ADAMSON. That is the reason I say you ought to hire a lawyer and pop a few of them.

Mr. DROSTE. Do you live in New York?

Mr. ADAMSON. No, sir; I am thankful to say that I live in Georgia.

STATEMENT OF MR. WILLIAM S. ARMSTRONG.

Mr. ARMSTRONG. Mr. Chairman and gentlemen, on the 13th of this month the matter of this proposed legislation was placed before the New York Board of Trade and Transportation, and as a member of its committee upon railway transportation I was delegated to appear before you to ask that you give it attention and give us the legislation. It is not necessary for me to make any argument with regard to the legality of it, because I am not a lawyer, but only a plain business man like the gentleman who preceded me, but I represent an association of something over six hundred members, and we are interested in both bills of lading, the straight bill of lading and the order bill of lading, and I desire here now to second what has been said by Mr. Droste, that we consider that the straight bill of lading affects our business, the business of those whom I represent, as much as the order bill of lading, and we are in favor of the features which you are asked to have incorporated in this bill before you with respect to rendering as near as possible a bill of lading a contract, which shall secure the uniformity of bills of lading, and also their use in the business of the country as it has been shown to you that it should and ought to be. I believe I have nothing further to say excepting that we, representing the board of trade, indorse this bill as it stands before you.

The CHAIRMAN. You indorse it as it is presented?

Mr. ARMSTRONG. As it is presented.

The CHAIRMAN. Well, it makes no reference whatever to that other form of bills of lading which you regard as so important, the straight bill of lading.

Mr. ARMSTRONG. I said that I seconded what had been said. I indorse what has been said as to the order bill of lading, as to all bills of lading.

STATEMENT OF MR. ALBERT M. READ.

Mr. READ. I have the honor to represent before you the American Warehousemen's Association and the National Board of Trade, in this matter, both of which organizations have very strong resolutions in favor of uniform bills of lading, and both of which are very much in favor of the enactment of the bill before you, even with the amendments which Mr. Droste has asked you to place upon it. The American Warehousemen's Association has been for the last three years engaged in obtaining similar laws, enacting exactly the same clauses as to negotiability in regard to warehouse receipts, through the conferences of commissioners on uniform State laws. That law has been promulgated by the conference, and within the last year it has been taken up and enacted in seven of the great States of this country, and will be before the Congress of the United States for the District of Columbia, and is before the committees at the present time,

giving the same degree of negotiability to the warehouse receipts—which are not interstate commerce, however—that this law seeks to give to a very much more important paper, the bill of lading. The warehouse receipts probably eventually will deal with about three hundred million dollars' worth of property per annum. The uniform bill of lading at the present time runs up into as many billions, perhaps. The reasons why we as warehousemen have been in favor of such an enactment are briefly these, that the commerce of the country is hampered, and the producer is put under a larger cost, by every obstacle that is placed in the way of free transportation and use of the products of farms, factories, and mines. If the banker has a larger risk he is going to charge a larger fee. If the warehouseman has a larger risk he is going to charge a larger storage, and it comes out of the producer, of course.

The CHAIRMAN. Well, does it? This instrument that you are seeking to alter is nothing more than an acknowledgment that certain merchandise has been received, and an agreement on the part of the carrier that it will deliver that merchandise at a given point. That is all there is in it. You are trying to pervert it from that and give it the character of a collateral in bank loans.

Mr. READ. It is already a collateral on bank loans.

The CHAIRMAN. No, in its nature it is not. It may be made so by custom or something of that kind.

Mr. READ. The custom is three hundred years old. It is stronger than law.

The CHAIRMAN. Well, I would doubt whether it was as old as that. But it has been diverted from its use as a receipt and as a contract, and now you are trying to give it a still further value as a collateral, by taking away from it in its present usage some of the doubts that may cluster around it, and mitigate against its complete value as a collateral.

Mr. READ. It seems to me that you misunderstand the import of these bills of lading. There is not money enough in the United States to carry the produce of our farms to market to-day, if it were not for just such arrangements as this bill of lading, as collateral.

The CHAIRMAN. Yes.

Mr. READ. It is one of the largest and strongest and best means of getting the produce of the market to the consumer that we have at the present time in our commerce.

The CHAIRMAN. I was not speaking at all of the advantages, probably, of it, but I was trying to get at what you are trying to do.

Mr. READ. And we want to increase those advantages to the full. Instead of an asset currency we want to use bills of lading; and they are used to-day. We want to use warehouse receipts. We want, in other words, to place this country in a condition where, during times of depression, a manufacturing concern can keep its labor force manufacturing, storing its goods, receiving its warehouse receipts and using them as collateral and keeping up the manufacturing until times of prosperity come back. We want to stop, or use this as an aid to stop, the depressions that are coming upon this country from time to time.

The CHAIRMAN. You would use them just the same in prosperity as in adversity?

Mr. READ. In both.

The CHAIRMAN. In both?

Mr. READ. In both. Now, what we do want is to throw around this bill of lading a decent amount of protection to the man who advances his money on it. It seems to me there can be no question in regard to the desirability of it.

Mr. ADAMSON. There are just two points of danger, as described by you gentlemen here, to the stability of that paper. One is that the paper is uttered without reception of the goods by the railroad, and at the other end the railroad delivers them to the wrong man.

Mr. READ. Why should you object to call that fraud?

Mr. ADAMSON. I never objected to that. I said that you ought to detect it and punish it, instead of coming here and begging us for the Government's aid.

Mr. READ. We have not law enough to do it.

Mr. ADAMSON. I doubt that very much; and even if we were going to do anything, it looks like the only natural thing to do would be to say that when an agent issues a bill in the line of his duty as agent it shall be binding, whether he had got the property or not, and at the other end to say that the railroad shall deliver to the holder of the bill of lading, and that he can collect damages if he does not get them.

The CHAIRMAN. As an evidence that the merchandise has been received, and as a contract that it shall be delivered at a given point to a certain person, is there not complete sufficiency in the instrument as it is now?

Mr. READ. That I should very much prefer that Mr. Williston should answer. I am not a lawyer, but a merchant and business man.

ADDITIONAL STATEMENT OF MR. SAMUEL WILLISTON.

Mr. WILLISTON. If I may answer that question, I would say that the question of the sufficiency of the instrument itself as a contract between the shipper and carrier is before the Interstate Commerce Commission, and I suppose they will recommend a form of bill of lading.

The CHAIRMAN. No, I am speaking of that which we have. Take this one that is here now.

Mr. WILLISTON. The particular forms of bills of lading in use I think are open to grave objection of various sorts as contracts between shipper and carrier.

The CHAIRMAN. Does this bill correct any of those defects?

Mr. WILLISTON. No, sir.

The CHAIRMAN. It does not. Then, in your estimate, as a receipt acknowledging the presence of the merchandise to be shipped, and a contract to ship it, the present bill of lading is sufficient?

Mr. WILLISTON. No, I should not say that. I should say that to correct the errors in the present bill we have gone to the Interstate Commerce Commission rather than to this body to correct the errors as a contract between shipper and carrier.

The CHAIRMAN. What are some of those, if you please?

Mr. WILLISTON. Of course the amount of risk that the carrier assumes, the amount that it is allowed to qualify by contract—the

common law liability—is the general question that is raised there. I said that in the present bill there was nothing in regard to the form. There is the question in regard to the words "not negotiable," and also there is the point of having the words "order of."

Mr. ADAMSON. They do not affect carriage and delivery, though.

Mr. WILLISTON. That is true. That has relation to the use of the bill of lading as an instrument rather than as a contract between carrier and shipper.

The CHAIRMAN. We hear a great deal nowadays about the liquid character of collateral, the liquid character of assets. Is not this simply a proposition to give a liquid character to commodities during the period of shipment, where ordinarily they are inert and do not enter into the immediate activities of commerce?

Mr. WILLISTON. I think that is a fair proposition.

The CHAIRMAN. So they can be used over and over between the point of shipment and the point of destination during the three or four weeks they may be needed?

Mr. WILLISTON. That is a fair statement. Of course they are so used now, but the degree of safety in doing that now is not what we think it might be, without any serious hardship to anybody.

The CHAIRMAN. Do not understand from the fact that I am asking these questions that I am opposed to your proposition. I am trying to get a thorough understanding of it.

Mr. WILLISTON. I think you have exactly the idea as to the purpose of the bill; and I should stand behind Mr. Read's assertion that the bill of lading has been used in this way for three hundred years to a greater or less extent, and to an increasing extent as time has gone on, and the increase of the use of it has brought out the difficulties which were not at first apparent when it was not so much used.

Mr. ESCH. What do you think of Mr. Droste's amendment, including straight bills of lading?

Mr. WILLISTON. The parties whom I represent raise no objection to that. It seems to us entirely proper.

Mr. STEVENS. If that be done, then on page 8 of the bill, section 20 n, line 11, there would have to be an amendment also, would there not?

Mr. WILLISTON. No.

Mr. STEVENS. As to cancellation by replevin or liens?

Mr. WILLISTON. No, I think not. Section 20 n is a qualification of section 20 h. Now, section 20 h applies only to order bills, and it is intended that it shall apply only to order bills. Mr. Droste does not suggest that railroads shall be forbidden to deliver goods for which straight bills are issued, without the surrender of the bill of lading.

Mr. STEVENS. Oh, yes; I see.

The CHAIRMAN. Will you not explain section 20 k?

Mr. WILLISTON. It was a rule of the common law that the material alteration of a document made it absolutely void; not that the alteration was void, but the material alteration of the document made the whole document void. Now, we do not want that result, and the railroads do not care for it, for there is in the bill of lading a condition which is very like this, but we are not perfectly sure what the effect of the contract between shipper and carrier merely may be on the

rights of a holder who is not the shipper. Now, section 20 k provides that instead of the document being void, the alteration shall be void, and the document shall be of the same force and effect that it was when it was originally issued. That sort of alteration of bills of lading is sometimes made by fraudulent shippers or fraudulent merchants in order to increase the credit and get more money from a commission merchant or from a bank than the bill of lading in its proper form would warrant. For instance, take the case that Mr. Droste put, of a bill of lading for 300 tubs of butter. A fraudulent shipper might raise that to 350 tubs. Under the rule of the common law that document becomes absolutely void by that fraudulent alteration. Under section 20 k it remains a good document for 300 tubs of butter, the amount for which it was originally issued.

The CHAIRMAN. Here are two sections; the one you have been speaking of and the one immediately preceding it, which seem to me to authorize the defenses to be made by the carrier against the verity of the bill of lading. The general purpose of the bill is to give it absolutely verity, so that any person may for value take it free from all equities. Yet here in these two sections you provide for defenses. Does not the presence of those two sections in your bill destroy the effect of the other two?

Mr. WILLISTON. No; they limit it, but do not destroy it.

The CHAIRMAN. Under the other provisions of this act the bill of lading would have implied and absolute verity and any man would be justifiable in taking it for value and relying upon it; but here you have two sections drawn to take away that absolute verity, and it seems to me that as those questions might arise in any one of the entire series, therefore you affect them all by the insertion of those two sections.

Mr. WILLISTON. Of course it would please a bank, for instance, to have given to a bill of lading the absolute verity you speak of, but we can not come here and ask the committee to report a bill that is manifestly unjust to the carrier, and we do not. Now, it is unjust to a carrier in the case of an alteration of a bill of lading (say, for 300 tubs of butter, so as to make it for 350 tubs of butter), to say that that imports absolute verity, and that you can go to the carrier and say, "You must stand behind this bill to its extent as altered, 350 tubs." That would be imposing an improper penalty on the carrier, and we do not seek to do it, and we are willing to say expressly in the bill that we do not seek to do it; and so in section 20 j. If 300 tubs of butter are shipped—closed tubs of butter—and they turn out to be lard with a little bit of butter on top, somebody is defrauded who pays a draft on that. It would be better for Mr. Droste and for the banker if we could say to the railroad, "You issued a bill of lading for 300 tubs of butter, and butter must come under that bill of lading or you are liable," but it would not be just to the railroad; and there again we do not ask this committee to go beyond what we believe to be just.

The CHAIRMAN. Then that argument would apply to every shipment that is not subject to the inspection of the carrier?

Mr. WILLISTON. Yes; unless there is collusion or want of reasonable care on the part of the carrier or its agents. If that has met the question of the committee I will permit Mr. Read to continue.

STATEMENT OF MR. ALBERT M. READ—(Continued).

Mr. READ. The only thing further that I wish to say is in regard to these warehouse receipts, that the States of New York, Illinois, Massachusetts, New Jersey, Connecticut, Iowa, and Virginia, have within the last year accepted the same degree of negotiability for warehouse receipts that is asked for in this bill for uniform bills of lading. The bills have been taken up in those States by local interests. They have gone into action in the States without objection except in one case, in New York State, and that was not a vital one. It went before Governor Hughes and he overruled it and signed the bill. In Virginia it has been passed in the last ten days, and the governor has signed the bill, giving the same degree of negotiability to the warehouse receipt, a kindred paper, that we ask for this uniform bill of lading.

The CHAIRMAN. Let me ask you, if you please, is this bill in any way the joint product of these various associations and any considerable number of carriers of the country?

Mr. NEVILLE. The carriers knew that this bill was being considered, and why they have not had some one here is something that I can not explain. This bill was submitted to one of the members of the executive committee of the Union Pacific Railroad on the 6th of March, and they were told that the hearing would take place in Washington on the 20th of March. I happened to see in the New York Sun that morning the dates that your committee had set for hearings; and why the railroads are not represented here I do not know.

Mr. READ. The railroads and the people that are interested on this side of the case have been before the Interstate Commerce Commission a number of times, and have discussed this matter very thoroughly, and we had hoped, up to December last, that we could get from the Interstate Commerce Commission the relief sought. The Interstate Commerce Commission, as has been stated here today, is very much in doubt as to whether they have the power to give that relief. I feel that I can say, in bounds, that they were not only willing if they had the power, in December, to give a separate order bill of lading, but to require that it should be made upon a different colored paper so that it should be distinctive in every way; but they do question now their power to do it, and they are not taking the steps that were urged upon them at that time. The associations that I represent, in the hope that we would get the relief through the Interstate Commerce Commission, passed resolutions, not in favor of this bill, because it was not before you at that time, but passed resolutions in favor of a very strong uniform bill of lading, and instructed me as their delegate to present it and urge it before the Interstate Commerce Commission, and I would like to submit to your committee copies of those resolutions.

Mr. ESCH. Did not the Interstate Commerce Commission last summer practically agree upon a form for a uniform bill of lading?

Mr. READ. The form was made out by the Eastern Classification Association of Railroads and a certain number of shippers and submitted to the Interstate Commerce Commission, and on October 15th, I believe, the railroads and the people interested were cited to appear before the Interstate Commerce Commission in regard to that mat-

ter. That meeting was held, and nothing has been done. In regard to the request for delay presented here by Mr. Cook from the Philadelphia Board of Trade, I think that the Philadelphia Board of Trade took that action with the distinct impression that the Interstate Commerce Commission was to take such action as had been indicated by them would be taken some time since; and that knowledge has come to us in the last ten days, that the Interstate Commerce Commission are feeling at the present time that they have no authority, and probably will not take the action requested. I think that explains the request of the Philadelphia Board of Trade for delay.

Mr. ESCH. In that connection, let me read a statement from the Interstate Commerce Commission's report, dated December 23, 1907. Under the title "Uniform bills of lading," they close as follows, and this was after the hearing of October 15 to which you refer.

Mr. READ. Yes, sir.

Mr. ESCH. They say:

> The entire record in this proceeding is now under consideration by the Commission, and a report in connection therewith will be made at the earliest practicable date. It is believed that carriers generally will adopt and put into use the bill of lading recommended by the Commission and that much practical benefit will thereby result to the shipping interests of the country.

Now, since that report you understand that the Commission has taken a different view of its powers?

Mr. READ. I do not know in regard to their powers, but I do say that they are not at the present time convinced that they have the power to do what they wanted to do after the meeting of October 15.

Mr. ADAMSON. That is, that they have the power to go outside of the questions of transportation and consult the ideas that the interests represented here want them to consult?

Mr. READ. It was indicated both to us and to the railroad people at that time that they were not only in favor of a separate order bill of lading, but that they were in favor of making it a separate, entirely distinct paper.

STATEMENT OF MR. SAMUEL WILLISTON—(Resumed).

The CHAIRMAN. Do not they regard it as practical, coming under the definition of the word "practical?"

Mr. WILLISTON. I spoke of this yesterday. The passage you read yourself indicates their belief in their lack of power. They feel that their power is confined to recommending. Of course, if it is a question of recommending and not prescribing, they can not recommend anything which the railroads are bitterly opposed to or seriously opposed to, and Chairman Knapp and the Commission have been trying since that was published to put it in this way, to see how good a bill of lading they can get railroad attorneys to agree to; and as to this matter of a separate, absolutely distinct form for bills of lading on separate colored paper and separate sheets, just why it is I do not know, but it is true that the railroads are strenuously opposed to it, and the Commission, therefore, I take it as certain, will not recommend that.

The CHAIRMAN. Would it be satisfactory to you and to the interests that you represent, in view of the possible fact that the Commission has not the power to prescribe a uniform bill of lading, that the legislation should go to the extent of giving them that power?

Mr. WILLISTON. We should be pleased to have that, but I think that business men sometimes fail to see the limitation which prescribing a uniform bill of lading has. Prescribing a uniform bill of lading, if the uniform bill is right, makes a perfectly satisfactory contract between shipper and carrier. It also has the advantage for the banker or the buyer, that he does not have to read a bill of lading every time he gets one. He knows what the conditions are. But whether a bill of lading is a liquid asset, to use your words, depends not altogether on the form of the bill of lading. The rule of the common law was that no contract, whatever its terms, except negotiable paper, could be a liquid asset; and I do not think any form of bill of lading whatever, without some legislation, can give the degree of negotiability, to use that word, to bills of lading which we seek by this legislation.

Mr. ADAMSON. There are only two material points in all your troubles, one being as to the validity of the issuing of the bill and the other as to the delivery of the goods to the person who has the paper at the time?

Mr. WILLISTON. No; that is not so.

Mr. ADAMSON. Well, what is it?

Mr. WILLISTON. I can tell you another. Those are two troubles, but there are others. This is the trouble. If a person—somebody who is neither the shipper nor the carrier, perhaps—is intrusted with an order bill of lading signed in blank, intrusted with it merely to keep it, or for a special purpose, we want the law to be such——

Mr. ADAMSON. How would that be done except in the course of business, when it would be indorsed and sent forward?

Mr. WILLISTON. Of course, it happens in the course of business.

Mr. ADAMSON. That is, in the journey through from one point to the other.

Mr. WILLISTON. All our troubles happen in the course of business; but the difficulty is as to the right of a purchaser of an outstanding document. Which of the two persons, shipper or carrier, owns that bill of lading and the goods which it represents? We have troubles along that line, also.

Mr. ADAMSON. In what sort of a set of circumstances would your case occur where you had deposited that paper with somebody to keep who was not either the owner or the shipper of the goods?

Mr. WILLISTON. This is a state of facts that is constantly arising: The banker lends money on a bill of lading or advances money for the purchase of the goods. The goods, perhaps, come from a foreign country, and they have to be entered at the custom house, and for that purpose the banker who has possession of the bill of lading indorses it to the person who may be called the general owner of the goods, the person who has had shipment made and at whose risk it is. He, instead of simply entering the goods at the custom house, goes around and shoves the bill of lading up at another bank. That has happened time and time again.

The CHAIRMAN. As I understand the decision of the Interstate Commerce Commission, they do not doubt so much their ability to prescribe and regulate the bill of lading as a factor in transportation, but they doubt their ability to make the bill of lading a liquid asset in commerce?

Mr. WILLISTON. No; of course the only proposition before them has been to prescribe a certain form of bill of lading. I have taken it as perfectly clear that they can not prescribe so as to make it a liquid asset; but they doubt their power to say to the railroad, "This is the only contract you shall make with a shipper;" and if they prescribe a bill of lading which must be used they are saying that.

Mr. ADAMSON. They can prescribe a bill of lading which affects nothing but transportation, but to enable them to enlarge its scope and put in provisions to protect commerce, as you claim, it would be necessary for us to enlarge the jurisdiction of the Interstate Commerce Commission and put banking under their jurisdiction, also?

Mr. WILLISTON. There has been no question of putting these provisions in the bill of lading. It is a question of any form of bill of lading. They do not feel that they can prescribe any form of bill of lading. I am not arguing now whether they are right in their feeling, but they feel that they can not; and their argument has been that if they prescribe any form of bill of lading they are virtually saying to the carrier, "This is the only contract you can make with the shipper." Now, does not that go beyond the regulation? I do not answer that question, but that is what gives them pause.

The CHAIRMAN. Will any other gentleman address the committee?

Mr. WILLISTON. It has been suggested to me that perhaps some members of the committee might like to speak to some members of the Commission on this subject, but I think I have represented the attitude of the Commission as Mr. Knapp outlined it to me yesterday, accurately.

The CHAIRMAN. Possibly before the committee take any action on the bill they would call upon the Interstate Commerce Commission.

Mr. WILLISTON. Yes.

STATEMENT OF MR. ALFRED H. BECKMAN, SECRETARY OF THE NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES.

Mr. BECKMAN. Mr. Chairman and gentlemen, the previous speakers have so thoroughly covered the subject, to my mind, of the necessity for your committee giving the bill thorough and careful consideration, and especially the amendments suggested by Mr. Droste, that I only wish to add the indorsement of my association to what has been said. We represent wholesale grocers who do a wholesale business in 35 States, numbering about 750 members, all of whom are on record in favor of a uniform or order bill of lading.

STATEMENT OF MR. GEORGE F. MEADE, REPRESENTING THE NATIONAL LEAGUE OF COMMISSION MERCHANTS OF THE UNITED STATES.

Mr. MEADE. Mr. Chairman, when I came here this morning I came more for the purpose of listening and finding the status of this bill than of appearing in its favor, although we do favor the provisions of the bill. We believe that the banking interests should have the very fullest kind of protection, as they are so large a factor in the handling of the products of the country. The special line I represent handles more especially perishable commodities, and we are specially

interested in the amendment offered by Mr. Droste. We are glad he has proposed that, so that if this legislation goes through without any further amendment regarding a uniform bill of lading we shall have received that much benefit.

The perishable goods of the country are shipped largely to commission men who advance money upon bills of lading and sometimes send checks for a partial payment on account. Very frequently, on goods from the gentleman's State, Georgia, a dollar a crate will be advanced, perhaps, on peaches. A draft will accompany the bill of lading, and perhaps a dollar a crate may be advanced on this, or a dollar a crate may be advanced and a check sent for that amount when the car is received, or perhaps before it is received.

We feel that there has been a good deal of uncertainty on this measure. On March 6 I received a letter from Chairman Knapp of the Interstate Commerce Commission saying that in thirty days they thought they might reach a conclusion on the uniform bill of lading, and asking that I meet him in New York yesterday, but he has also expressed the same view to me that he has to Professor Williston, that they feel somewhat in doubt as to their power to prescribe a uniform contract between the railroad and the shipper. So we hope that within a short time, on the suggestion of the chairman of this committee, the Commission will be invited in to confer with the committee. We should like to see this whole matter taken up and considered in a comprehensive way, so that if that can not be done we are strongly in favor of the passage of those bills which will give adequate protection to those who advance money on these products, whether perishable or nonperishable.

STATEMENT OF MR. WALTER GRESHAM.

Mr. Gresham. Mr. Chairman and gentlemen, yesterday I received a telegram from the cotton exchange of Galveston, requesting me to come before this committee and state that they were anxious that this bill, which they mentioned particularly, should, if possible, become a law. A similar telegram was received at the same time from the Galveston Chamber of Commerce. You gentlemen will see that within the limited time I have not had an opportunity to analyze and digest this bill so as to discuss it very intelligently before you. I do know, however, that the way the commodities are handled in our State, the bills of lading lead to a good many frauds, and if possible I think something should be done to correct that, as far as possible. During the last fiscal year there was exported through the port of Galveston about $238,000,000 worth of products. Perhaps 90 per cent of the cotton crop was on through order bills of lading, as I should term it. The same could be said of flour and packing-house products. The wheat and corn were shipped through upon bills of lading issued directly by the ships, and perhaps in that case were not subject to the same trouble that the through bills of lading issued by the railroads are subject to in Oklahoma and Texas and Kansas City and Wichita and other places in the West; but those through bills of lading give us a great deal of trouble. You can readily see that in such a vast volume of commerce as is handled through there, of commodities destined for a foreign market, every facility in the world must be granted to the bankers in order that they may have capital enough

to handle this business, and for that reason we think that every legitimate advantage that can be given to these bills of lading should be given.

Mr. ADAMSON. Do any troubles ever arise with you, Judge Gresham, affecting the validity of the receipts for a carload of cotton?

Mr. GRESHAM. One bank was soaked to the extent of $84,000 worth of cotton last year.

Mr. ADAMSON. How did it happen?

Mr. GRESHAM. It is a little hard for me to tell.

Mr. NEVILLE. This is a little foreign to the question at issue.

Mr. ADAMSON. I do not intend to ask any question foreign to the question at issue. I wanted to know whether there was any place where a railroad issued a false bill of lading to a rascal who banked on it?

Mr. NEVILLE. Two.

Mr. GRESHAM. Yes, sir.

Mr. ADAMSON. Where did it occur?

Mr. GRESHAM. There was one at San Antonio.

Mr. ADAMSON. Did the railroad issue a false bill of lading for cotton that was not in existence?

Mr. GRESHAM. I can not tell you. This only came to my attention yesterday, and I have never had occasion to examine into these matters. But it is very difficult, where a bill of lading is sent to a foreign port, to get the evidence to convict those people.

Mr. LOVERING. Is it not the practice, long after the cotton is taken off the sidewalk at Galveston and put onto the train, is it not customary, to get a bill of lading and draw, and have your money in hand six weeks before you deliver a bale of that cotton?

Mr. GRESHAM. I suppose you mean from the interior to Galveston?

Mr. LOVERING. Yes.

Mr. GRESHAM. Because if it is in Galveston it is delivered not to the railroads but to the steamships.

Mr. LOVERING. I will not say Galveston particularly, but to some point.

Mr. GRESHAM. At points in the interior that is frequently the case.

Mr. LOVERING. And that cotton will lie on the sidewalks for two months?

Mr. GRESHAM. I will not say on the sidewalks, because it does not go to Galveston, but in the compresses and on the depot platform.

Mr. ADAMSON. When it is in a compress it is already in transit, and has been received by the railroad.

Mr. LOVERING. No, that is not at a compress.

Mr. GRESHAM. The railroad company issues a through bill of lading.

Mr. LOVERING. Who is responsible for that particular lot of cotton after you have drawn your bill of lading and gotten your money? Whose cotton is that?

Mr. GRESHAM. I take it, it follows the bill of lading; the right to the cotton follows the bill of lading.

Mr. LOVERING. The bill of lading goes forward, and the New England spinner pays for the cotton anywhere from two to three months before he ever sees it?

Mr. GRESHAM. Yes, sir; the bulk of that I am speaking of now goes to Europe.

Mr. ADAMSON. But it is in transit; it is in the hands of the transportation company; it has been received?

Mr. GRESHAM. Yes.

Mr. ADAMSON. It has been received and the receipts are there?

Mr. GRESHAM. Yes; and those receipts are in such form, I believe, as the gentleman from New York stated should not be permitted; that is, they are made out with pencil, and made out very loosely and informally.

The CHAIRMAN. Have you some samples of that class of bills of lading?

Mr. GRESHAM. No, sir. As I say, I never knew anything about this until yesterday. I was requested to come and express to you gentlemen the desires of the commercial body of the town where I live. We desire to have this law put into force, if possible. I am sorry, Mr. Chairman, that I can not give you all the information you ask, but I have just stated the facts as far as they are within my knowledge.

STATEMENT OF MR. L. MANDELBAUM.

Mr. MANDELBAUM. In connection with what Mr. Gresham has stated, I would say that a railroad at Birmingham issued a bill of lading for 200 bales of cotton through their agent, and no cotton was ever received by the railroad company, and the matter is still in the courts of Alabama. The agent signed a bill of lading for 200 bales of cotton, the agent of the Georgia Central Railroad Company, without receiving the cotton.

Mr. ADAMSON. How came he to do that?

Mr. MANDELBAUM. I could not answer that, what made him do it. He did it.

Mr. ADAMSON. I do not care anything about any motive that was in his heart; I only want to know how that happened.

Mr. MANDELBAUM. I do not know his motive. I only can state the facts.

Mr. ADAMSON. What did they do with him?

Mr. MANDELBAUM. They have not done anything with him, and they have not done anything with Smith and Coughlin so far, either.

Mr. ADAMSON. Did they deny his authority to sign it?

Mr. MANDELBAUM. Yes, sir; that is the claim that is put up on the part of the Georgia Central Railroad Company. All you gentlemen who are lawyers undoubtedly understand that that is the claim that is put up on the part of every railroad company.

Mr. ADAMSON. And he has not been prosecuted by anybody?

Mr. MANDELBAUM. We have tried to prosecute Smith & Caughlin.

Mr. NEVILLE. Caughlin, not Smith. They have failed.

Mr. MANDELBAUM. I can cite many more instances in which that business has happened. In Monroe, La., a man by the name of Bandy shipped cotton, and it never was received by the agent there.

Mr. LOVERING. It was paid for?

Mr. MANDELBAUM. Yes, and some of your friends in the New England States paid for one lot which they did not get, either. A friend of mine in New York State paid for 200 bales of cotton which he did not get either. He has not gotten that up to the present time. It is quite a litigation, and that is still going on, as to fixing the responsibility, and so far it has been very unsuccessful and very costly.

If you will permit me, Mr. Chairman, I want to make just a few little remarks on the subject. If you will look at the whole discussion to-day and ask yourselves what is really asked by us, you will find that there is nothing asked on the part of this committee that will not benefit the producers more than the consignee. The consignor in a great many instances has no interest in the goods any more after his draft has been honored by a consignee. All we desire is to get a provision that when the railroad company through its agent receipts for 200, 300, or 400 bales of cotton on an order bill of lading, we can be sure that that cotton will be forthcoming at some time, and that no claim can be put in on the part of the railroad that it is not responsible for any cotton that is received by the agents. Luckily in the Alabama case the State statutes made the railroad responsible.

Alabama is one of the States in which the railroad is held responsible not only in the case of the agent not having received the cotton, but also as to quality and quantity. There are only three States in the South that hold so. However, that does not make any difference; notwithstanding that that is so, it has led to a great deal of litigation, and the claim has always been set up by the railroad company that no such authority was given to the railroad agent. Now, you should take into consideration the fact that the business of moving the great staples of this country, of which cotton is one, is of such a magnitude that it absolutely could not be done without the use of the order bill of lading. You take the State of Georgia. Georgia shipped this year from $110,000,000 to $115,000,000 worth of cotton that could only have been shipped from the fact that we had an order bill of lading, which facilitated the movement of that cotton. You also, to a certain extent, will appreciate the interest the cotton exchanges have in this matter. The New York Cotton Exchange, perhaps the most unique organization of its kind, whose members are all over the civilized world, even in Egypt and Turkey, have handled in the last two years not less than 80 per cent of the actual cotton grown in the United States, and they have made payments on the faith of order bills of lading, the legality of which I think is questioned not only before this committee, but by the railroads and almost everyone. This business on the basis of an order bill of lading has grown to the magnitude it has at the present time simply from the fact that the people did not know nor appreciate the risk which they were running when they paid on the faith of these order bills of lading. So much has happened in the last two years that they have waked up to the fact, that they have commenced to appreciate the great risk which they are running in paying order bills of lading, the legality of which appears to be questioned everywhere; and you can rest assured, gentlemen, that unless Congress sees fit to do something in this matter defining the responsibility on the part of the carriers on an order bill of lading, the business in moving the great crops of this country will have to be entirely reorganized.

Mr. LOVERING. Do you mean to say that the New York Cotton Exchange handles 80 per cent of all the cotton of this country?

Mr. MANDELBAUM. I did not say that. I said members of the New York Cotton Exchange.

Mr. LOVERING. Do you mean to say that members of the New York Cotton Exchange handle 80 per cent of the cotton of this country?

Mr. MANDELBAUM. They handled 80 per cent of the actual cotton produced in the United States; and I say this without fear of successful contradiction.

Mr. LOVERING. That includes members residing in other countries, as I understand it?

Mr. MANDELBAUM. Residing in New York, and some in Germany, and some in England; but members of the New York Cotton Exchange handled 80 per cent, and considerably more than 80 per cent, of the actual cotton produced in this country.

Mr. LOVERING. They do not handle it through the exchange?

Mr. MANDELBAUM. It is handled through the exchange in various ways.

Mr. LOVERING. But they do not show that they handle so much cotton.

Mr. MANDELBAUM. That is one of the reasons that gives the exchange a great volume of business; it is handled by parties who are not all residing in New York, but who are members of the New York Cotton Exchange.

Mr. LOVERING. One more question, and I will not ask you anything further. Do I understand you to say that the members of the New York Cotton Exchange handle on the New York Cotton Exchange 80 per cent of all the cotton——

Mr. MANDELBAUM. I did not say that.

Mr. LOVERING. Of the country?

Mr. MANDELBAUM. I said members of the New York Cotton Exchange handled 80 per cent of the actual cotton produced in the United States.

Mr. ADAMSON. In other words, the principal dealers in cotton over the country are members of that exchange?

Mr. MANDELBAUM. Yes, and must be. They could not do their business without it.

Mr. LOVERING. Do they handle it on the exchange?

Mr. MANDELBAUM. In various ways; yes, sir.

Mr. LOVERING. In what ways?

Mr. MANDELBAUM. Of course, this matter is foreign to the matter under discussion, but I am perfectly willing to state it to you.

Mr. LOVERING. I do not want you to mislead the committee, or to have you misled, either.

Mr. MANDELBAUM. You asked me a question and I desire to answer you. What was the question you asked?

Mr. LOVERING. Whether 80 per cent of the cotton of this country was handled by the members of the New York Cotton Exchange on the cotton exchange or through it?

Mr. MANDELBAUM. Not necessarily on it. Well, in various ways, yes.

Mr. LOVERING. Were there over 200,000 bales in any one year actually handled on the New York Cotton Exchange?

Mr. MANDELBAUM. Yes; very much more.

Mr. LOVERING. How much more.

Mr. MANDELBAUM. I remember years when they handled 400,000 bales; but cotton is handled on the New York Cotton Exchange without reaching the cotton exchange.

Mr. LOVERING. That is all I wanted to know.

Mr. MANDELBAUM. It is in transit.

Mr. NEVILLE. I have no one else to present to you, Mr. Chairman, and we thank you very much for hearing us.

At 4.15 o'clock p. m. the committee adjourned.

BILLS OF LADING.

NEW YORK, *March 17, 1908.*

At a special meeting of the executive committee of this exchange held to-day, and specially called for the purpose, the following resolutions were unanimously adopted:

Whereas it has come to the knowledge of the New York Mercantile Exchange that there are pending in the Congress of the United States certain measures designed to establish a uniform bill of lading to be issued by railroads and carriers throughout the United States in their interstate business; and

Whereas the members of the New York Mercantile Exchange are vitally interested in this subject for the reason that they advance large sums of money upon bills of lading on shipments of dairy products, eggs, and poultry, which advances aggregate from sixty to one hundred million dollars annually. Therefore be it

Resolved, That the New York Mercantile Exchange, through its executive committee, do, and hereby does, express its unqualified approval of the purposes of House of Representatives bill No. 14934 and of Senate bill No. 4914, regulating bills of lading. And be it further

Resolved, That this exchange and its members call upon the representatives of the State of New York in both Houses of Congress to support this legislation, the importance of which becomes apparent upon a study of the existing slipshod methods of many railroads in issuing bills of lading, which methods have brought hardships, losses, and litigation upon merchants who necessarily depend upon the integrity of the representations made by the railroads in issuing such bills of lading and make advances and give credit upon the faith of the property which such bills of lading purport to represent.

Resolved, further, That a copy of this resolution be sent to each Senator and Representative of the State of New York in the Congress.

HENRY DUNKAK, *President.*
WILLIAM D. LAWLER, *Secretary.*

AMERICAN WAREHOUSEMEN'S ASSOCIATION.

MARCH 9, 1908.

At the seventeenth annual convention of the American Warehousemen's Association, held at Washington, D. C., on December 4, 1907, the following resolutions were unanimously adopted:

"Whereas the Interstate Commerce Commission has now in hand the formulation of a uniform bill of lading to take the place of all others now in use by the railroad carriers of the country; and

"Whereas it is deemed obsolutely essential to the proper conduct of the commerce of the country that order bills of lading, so imporant a vehicle in the movement of its crops, should be so segregated by all practical means from the so-called straight bills of lading that they can be readily recognized; therefore be it

"*Resolved,* That the American Warehousemen's Association, in annual meeting assembled, strongly favors the separate form for the so-called straight and order bills of lading, so devised that they may be readily distinguished, not only by their wording, but by their color as well; and be it further

"*Resolved,* That a certified copy of this resolution be furnished the Interstate Commerce Commission."

WALTER C. REID, *Secretary.*

NATIONAL BOARD OF TRADE.

PHILADELPHIA, *March 9, 1908.*

Extract from the minutes of the thirty-eighth annual meeting of the National Board of Trade, held in Washington, D. C., January 21, 22, and 23, 1908.

I. UNIFORM BILL OF LADING.

Whereas the Interstate Commerce Commission has now in hand the formulation of a uniform bill of lading to take the place of all others now in use by the railroad carriers of the country; and

Whereas it is deemed absolutely essential to the proper conduct of the commerce of the country that order bills of lading, so important a vehicle in the movement of its crops, should be so segregated by all practical means from the so-called straight bills of lading that they can be readily recognized: Therefore be it

Resolved, That the National Board of Trade hereby petitions and prays the Interstate Commerce Commission to require for such order bills of lading a distinct and separate form, so differentiated by its wording, color, etc., that it shall be readily distinguished, and that the following forms be submitted to the Commission for its consideration:

ORIGINAL.

________________ Railroad Company.

________________ Station ________________ 190__

Received from ________________

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), to be transported and delivered, in accordance with the provisions of law, in like good order, to consignee.

(Insert description of articles, weight, rate, route, and car number and initials, if in carload.)

[Not negotiable.]

OFFICIAL STAMP. ________________ Agent.

ORIGINAL.

________________ Railroad Company.

________________ Station ________________ 190__

Received from ________________ the property described below in apparent good condition, except as noted (contents and condition of contents of packages unknown), to be transported and delivered to the order of ________________ in accordance with the provisions of law and the terms of this bill of lading.

The property herein described shall not be delivered until this original bill of lading, properly indorsed, has been surrendered and canceled, or, in case of partial delivery, a statement thereof has been indorsed hereon.

Any stipulation or indorsement on this bill of lading that it is not negotiable shall be void and of no effect.

Inspection will be permitted under this bill of lading, unless otherwise indorsed hereon, which indorsement shall be made at the time of issue by the agent, if requested by the shipper. Any alteration, addition, or erasure, fraudulent or otherwise, in this bill of lading, which shall be made without the indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforcible according to its original tenor.

Special Marks.	Consigned to order of ________________
	Destination ________________
	Notify ________________
	At ________________

(Insert description of articles, weights, rates, and routes, and car numbers and initials, if in carloads.)

OFFICIAL STAMP. ________________ Agent.

True copy.

W. R. TUCKER, *Secretary.*

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Wednesday, March 25, 1908.

Committee called to order at 10.35 a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF HON. MARTIN A. KNAPP, CHAIRMAN INTERSTATE COMMERCE COMMISSION.

The CHAIRMAN. Mr. Knapp, the committee has had under consideration various propositions relating to a uniform bill of lading, and members of the committee are of the opinion that the Interstate Commerce Commission has had that under consideration also, and that there had been some convention between the railways and the shippers through the Commisison. We would like to know your own views upon this subject, if you see fit to give them to us, and also whether anything has been done in the way I have mentioned, what is contemplated, and what progress has been made. The number of the bill is 14934.

Mr. KNAPP. Mr. Chairman, let me say at the outset that the pending bill in its essential features seems to me to involve matters of legislative policy respecting which the Commission has no jurisdiction under existing law, and concerning which it is perhaps no better able to form a reliable opinion than are the members of this committee. Some little time before the first of January, 1905, in preparing the official classification which was to take effect on that date, certain changes were proposed relating to the subject of bills of lading which were regarded as highly objectionable by shippers in different parts of the country, and thereupon they made complaint, and the Commission took up the matter for investigation. At the hearing which followed, I think in February, 1905, it appeared to the Commission that this was a matter involving the practical experience of shippers and carriers, and that some cooperative effort on their part was likely to produce better results than any determination of the Commission, assuming it had authority, because the Commission is not expert upon those questions. That suggestion met with approval, and thereupon a joint committee was appointed which represented on the part of the carriers practically all of the railroads in official classification territory, that is, the territory north of the Ohio and Potomac rivers and east of the Mississippi, and on the part of the shippers, as was claimed, a very large proportion of all the shippers in that territory, through the different commercial organizations which were represented in the committee. And so far as I have information they addressed themselves to this task in the utmost good faith, with a sincere desire to reconcile differences and to produce a uniform bill of lading which, while exempting the carriers from some of the liabilities imposed by the common law, nevertheless retained a sufficient measure of liability to meet all the practical requirements of the shipping public, and also to greatly simplify the bills of lading then in use.

That committee continued their negotiations until the summer of 1906, when they came before the Commission and submitted a bill of lading to which they had substantially agreed, and thereupon, in order that there might be the widest publicity and the largest opportunity to present conflicting views, the Commission made a supple-

mental order, which was sent out to all carriers throughout the United States, to commercial organizations and representative shippers, and to many individual shippers, an order which recited the proceedings that had been had up to that time, and which contained a copy of this agreed bill of lading which the joint committee had submitted, and which directed the carriers before the 15th of September to present any objections which they had to its adoption, and also provided for a public hearing in October following. That hearing occurred, lasted a couple of days, and was very largely attended, and the whole subject was pretty thoroughly discussed; and while quite a number of objections were made to the proposed bill, it appeared to the Commission that the differences were superficial rather than substantial and that there was every reason to believe, on further consideration, that a bill of lading could be recommended by the Commission which the carriers would accept, which would be fairly satisfactory to the shipping public, and a very great improvement over the bills of lading now in use. There has been some delay in continuing those negotiations, not altogether the fault of the Commission, but mainly because the representatives of the shippers were unable to come to Washington at various times which had been proposed for a conference; and without wearying you with details, the present condition of that effort is simply this: That some modifications to the bill of lading submitted last year have been practically accepted, and we anticipate that within the next thirty days we shall be able to make a report in which it is our intention to recommend the adoption of the bill of lading which is the outcome of these efforts and negotiations.

Mr. ESCH. You can not prescribe; you merely recommend.

Mr. KNAPP. I was about to say, Mr. Chairman and gentlemen, that it is the impression of the Commission that we have not authority to prescribe a uniform bill of lading, to say to the carriers that on and after such a date they must use a particular bill of lading; and it is apprehended, if we should take the other view and prescribe a bill of lading which carriers are unwilling to accept, that they would resist its adoption on the ground that the Commission had no authority to prescribe it; and that would simply bring on an indefinite period of litigation. I may say that I have had perhaps more to do with that matter than my associates, but it has seemed to us that the most helpful course we could pursue would be to secure the best bill of lading for the shipping public which a large number of carriers, if not all carriers, indicated their willingness to accept and put in practical use. That bill being in use, if complaint is made respecting any of its provisions, complaint raising any question within our jurisdiction, we would have something concrete and definite to act upon, and could make appropriate orders from time to time as might seem to be necessary. That briefly covers the present situation.

The CHAIRMAN. Have you a copy of the bill of lading that you thought would be acceptable?

Mr. KNAPP. I have a copy of the order which was sent out by the Commission and which contained the original bill as submitted by the joint committee, but it only indicates in pencil some of the changes which have been tentatively agreed upon. I think I may say

that so far as any changes have been made, they are all in the interest of the shipping public, and all designed to give greater simplicity to the instrument.

The CHAIRMAN. Is that what you would mean as the bill of lading that the Commission would prescribe if they felt they had the power?

Mr. KNAPP. If I may assume to speak for my associates, whose opinions upon that point I have had no opportunity to obtain, I should say yes.

The CHAIRMAN. It meets your own approval.

Mr. KNAPP. Yes. Let me again, however, say, as I said at the outset, that the essential features of this pending measure go to matters which have not been much under consideration.

The CHAIRMAN. Would you have any objection to giving us your views respecting this bill so far as it relates to changes in the negotiable character of a bill of lading, and the verities that it is proposed in this bill the bill of lading should carry?

Mr. KNAPP. Bear in mind, Mr. Chairman, that those are matters outside the jurisdiction of the Commission—matters of legislative policy.

The CHAIRMAN. We simply wanted your opinion as one who had had much experience and much observation in transportation matters.

Mr. KNAPP. I am myself impressed with the desirability of giving to these important agencies of commerce the degree of negotiability provided for in this bill.

Mr. STEVENS. What about the creation of another bill which should not be negotiable?

Mr. KNAPP. That goes perhaps to a question of form, and that is one thing which is not yet finally determined. I have discovered that there are differences of opinion on the part of shippers—some are quite desirous that there shall be two separate forms of bills of lading, one called the order bill of lading and the other called a straight bill of lading, to be printed in different colors so as to be readily distinguishable. On the other hand, some shippers and some carriers have indicated that they do not regard two bills desirable, that it would frequently happen that a shipper would order a car, load it, and expect at the time to use a straight bill of lading, and then for some reason, at the last moment, would conclude to send it to somebody's order; and that while theoretically it was very desirable to have two kinds printed in different colors, yet as a practical matter they are doubtful of its utility.

The CHAIRMAN. If you had two kinds, who should have the option?

Mr. KNAPP. The shipper of course.

The CHAIRMAN. Then that would practically mean but one kind, would it not?

Mr. KNAPP. I think not, Mr. Chairman. I think that in the majority of shipments the straight bill of lading would be preferred. The order bill of lading seems to be desired only in cases where the shipper wishes to draw a draft on his consignee and attach the bill of lading as security and get his draft discounted so that he can have money to go into the market and buy further; whereas, ordinary shippers who do not need to avail themselves of credit in that way would not draw against the shipper, and would prefer straight bills of lading. As respects that question, the difference between the bill

of lading proposed in this bill, and the bill of lading which has been under consideration by the Commission is that this bill requires the words "order of" to be printed in the bill when the traffic is to move under an order bill of lading, whereas the bill of lading submitted and agreed upon by the joint committee will be prepared with a blank, so that if nothing is inserted in the blank it will be a straight bill of lading, and if it is desired to make it an order bill of lading then the words "order of" would be filled in the proper blank and the name of the consignee, thus making it an order bill of lading.

Mr. MANN. The bill that is before us, which we discussed the other day, I do not think gives a shipper the option of saying whether it shall be an order bill of lading or not, but seems to give that option to the railroad company. If it were enacted in that shape, would the railroad companies exercise their option as a matter of business, or give an order bill of lading without any question?

Mr. KNAPP. I had assumed that the shipper would have the option. The carrier certainly could not desire the order bill of lading; it is the shipper who would want that.

Mr. MANN. I understand, but the carrier might want to give order bills of lading as a matter of business; still, the bill itself does not require the carrier to give order bills of lading, but provides what shall be the effect if the carrier does give order bills of lading. That is as I read the bill.

Mr. KNAPP. I think that is a fact.

Mr. ADAMSON. Adding to this contract with carriers the condition of negotiability, for the convenience and the credit of the shipper and the banks, is something outside of the usual order between the shipper, carrier and consignee, is it not?

Mr. KNAPP. That is perhaps so.

Mr. ADAMSON. And so far outside of the usual order that you did not feel you had jurisdiction?

Mr. KNAPP. Evidently not.

Mr. ADAMSON. In practice, if this were accomplished, would it not involve delays and difficulties in shipments and delivery, and questions of demurrage, while waiting to find the legal title or equity in the goods.

Mr. KNAPP. So far as I have heard the matter discussed, that objection has not been made.

Mr. ADAMSON. Can you see anything in that?

Mr. KNAPP. I assume that the representatives of the shippers and the representatives of the carriers would be very keen in perceiving an objection of that sort if it was substantial.

Mr. ADAMSON. Then the case has not been entirely presented to you, for I have understood, from the arguments presented here, that it is desired to use the bill of lading for credit and for raising money. Has that not been presented to you?

Mr. KNAPP. I think not.

Mr. ADAMSON. As it is, the railroad companies forward the goods, and on the face of their knowledge of the parties and their ability to make a right delivery, they are in a hurry to deliver the goods and then apply a demurrage if they are not called for. If you complicate that subject with other features so as to give greater credit, and permit more money to be advanced, is it not likely that there will be difficulties about delivery, delays and demurrage?

Mr. KNAPP. Of course I have had no experience upon which to predicate judgment. I can only repeat that no such objection has been made so far as I know.

Mr. ADAMSON. When the goods arrive at a station, instead of delivery to somebody calling for them, the agent first has to wait and see who has the bill of lading, who has an order on the bill of lading, and who is going to claim the goods; and litigation may arise out of that.

Mr. KNAPP. That might turn out to be the case. It has not occurred to me that the question of demurrage was involved in the bill of lading matter at all.

Mr. ADAMSON. Then is this the first time there has been brought to your notice the proposition of the interest of banks in bills of lading as securities, adding another condition in the contract between the people concerned; I am referring to the proposition to intervene between shippers and carriers on a contract for transportation, attaching a provision securing greater credit, making the banks more secure—there has been no proposition to apply that to any other contracts in any other relation of life, have there? Isn't it something unusual?

Mr. KNAPP. You may be right about that; I don't know.

Mr. ADAMSON. If we can get the railroads to put in effect proper schedules and make proper connections, and maintain something like equity and fairness in the localities where they operate, that will be very nearly up to their conditions, will it not, and we ought to be pretty well satisfied without going into this banking proposition?

Mr. KNAPP. If I understand the matter, this proposition to require the surrender of an order bill of lading upon the delivery of the property to the consignee is in the interest of the shipping public as well as the bankers. It is a proposition incorporated in the bill of lading submitted by the joint committee, and will be included in the recommendation by the Commission.

Mr. ADAMSON. Let us see about that. Is it proposed that it will facilitate shipments at all, or take better care of the freight; is there any feature in this proposition to be observed by this change of transportation at all?

Mr. KNAPP. I don't think it relates to that.

Mr. ADAMSON. Divested of all extraneous matter, there are two points in it; first, as to the people who want to take these bills of lading, or transfer them, and bolster up their credit—who want security against uncertainty at the shipping point, by fraud, and uncertainty of delivery at the other end of the line; and is it not for the benefit of the securities and the advances?

Mr. KNAPP. All those are questions which appeal to ordinary observation and experience, and upon them you are quite as competent to judge as I am. What seemed to me to be the essential thing desired by the banks, and desired by them not only in their own interest but in the interest of the shipping public, was to prevent the negotiating of "spent" bills—that is to say, a fraud on the banks.

Mr. ADAMSON. At the other end of the line the railroad has delivered to the party who has not title to the bill of lading, and the other difficulty is that at the point of shipment the shipper, through

collusion and fraud with the corrupt agent of the railroad, gets a bill which does not represent anything, negotiates it, and the bank which gets it loses that money. Those are the only propositions in it that have been presented and argued here before this committee; and I submit to you, are they necessarily matters of transportation, and ought we to put upon the carrier additional burdens for the sole purpose of removing evils of that sort, evils which the common law generally meets?

Mr. KNAPP. So far as the first question is concerned, I do not think there is any considerable burden, and I infer that from the fact that there is no objection that the law, if you choose, shall require that when property transported on an order bill of lading is delivered to the consignee the bill of lading shall be surrendered to the carrier, so that a fraudulent consignee may not retain possession of the bill of lading and go to a bank and negotiate that instrument and get money on it, although the property has already been delivered to somebody else.

Mr. ADAMSON. But common business sense would suggest that they should know where the bill of lading is before they deliver the goods, and they do not need legislation for that. If the railroad companies do not object to this, why is it that they do not agree without coming to Congress for legislation?

Mr. KNAPP. I do not think I am qualified to answer that question any more than you gentlemen of the committee.

Mr. MANN. Order bills of lading are practically necessary to-day in the prosecution of business, are they not?

Mr. KNAPP. I think there can be no doubt about that, and the immense sums of money involved in the uses of bills of lading as collateral security is sufficient evidence of that fact.

Mr. MANN. And the cost to the people upon the money borrowed usually is somewhat commensurate with the risk?

Mr. KNAPP. Presumably.

Mr. MANN. So would it not be a natural consequence that if order bills of lading were made more secure and the risk less, that the cost to the people who borrow money on them might be to a degree lessened?

Mr. KNAPP. It ought to have that tendency.

The CHAIRMAN. On the other hand, if certain defenses that a railroad company might make to an action on a bill of lading are taken away—that is, the power to use them—wouldn't it have a tendency to increase the cost of transportation?

Mr. KNAPP. That might be so. There appear to be two fundamental questions presented by this pending bill; one is to require the surrender of the order bill of lading upon the delivery of the property, and, as I have already said, there seems to be no serious difference in respect to that matter.

Mr. ADAMSON. Except that a man ought to have sense enough to do that without an act of Congress.

Mr. MANN. But the railroad company runs no risk now by not doing it?

Mr. KNAPP. Probably not; but the other question involved in this bill is of an entirely different nature, and that is a proposition to make the carrier responsible for whatever property its agent certifies

it has received—that is to say, if you take ten bales of cotton to a railroad agent at a small station and he issues a bill of lading for 100 bales of cotton, by fraud and collusion, then this bill would make the carrier liable.

Mr. BARTLETT. Do you think that is proper?

Mr. KNAPP. That is purely a matter of legislative policy.

Mr. MANN. But going beyond that, have you examined the terms of this bill No. 14934?

Mr. KNAPP. I did not see it until your chairman sent it to me yesterday afternoon, and I went through it last evening.

Mr. MANN. I want to ask your judgment, if you wish to give it, as to the constitutional power of Congress to legislate, not in regard to the form of a bill of lading, not in regard to the surrender of a bill of lading, but in regard to the liabilities, whether it shall be a crime to negotiate a bill of lading without title, or to issue a false bill, or as to the rights of the transferee, or how the bill may be transferred, all of which matters are now supposedly regulated by the States. Has Congress, under the power to regulate interstate commerce, power to do all of this with reference to some instrument that may be issued in connection with interstate commerce?

Mr. KNAPP. I had not considered that question, Mr. Mann.

Mr. RICHARDSON. As to that second fundamental proposition, it is, as I understood you, to make the carrier responsible for every receipt it gives expressing how much freight has been received; if it got only ten bales of cotton when a receipt was given for 100, to make it responsible for one hundred. What line of defense would you allow the carrier to make against such a receipt as that?

Mr. KNAPP. It is hardly my province to anticipate the defense of a railroad to such a proposition.

Mr. RICHARDSON. What defense could it make?

Mr. KNAPP. That is not the liability at present. The railroad company is not liable; that is, in most jurisdictions.

Mr. BARTLETT. Under the decision of the Supreme Court of the United States?

Mr. KNAPP. No.

Mr. RICHARDSON. But the railroad would have the opportunity, would it not, if there was collusion between the agent and the shipper—would you still hold the railroad responsible? I am talking about your idea about it, so that I may act intelligently, properly, justly and fairly.

Mr. KNAPP. As I understand the argument, briefly, it is this: The proposition in this bill would make the bill of lading binding upon the carrier whose agent issued it in much the same sense and to the same extent that a bank would be liable for a certified check. The bank might certify my check when I have not funds there, but the bank becomes liable to the bona fide holder of that check.

Mr. RICHARDSON. That is, as I get your idea, that the bank, or the railroad, would be unqualifiedly and unconditionally liable regardless of being allowed to make any defense whatsoever.

Mr. KNAPP. That is the purpose of it.

Mr. RICHARDSON. That would apply even to commercial people. There are defects and imperfections recognizable in transactions with regard to bank paper, but you are making it much stronger than bank paper.

Mr. KNAPP. What I have heard said is simply this, pointing out the difference between the railroads and banks: A bank conducts its business in one place or in one building, and its employees and agents are under the direct supervision and observation of the officials in charge, and only a limited number of officials have authority to certify a check. Therefore the bank is in a position to protect itself, as a practical matter, against frauds in the certification of checks. Whereas, a railroad operating through several States and employing hundreds of agents of varying degrees of capacity and honesty is not in a situation to protect itself, and it is a very serious liability to impose, to say that whatever amount of valuable property any agent may acknowledge the receipt of, the railroad thereby becomes responsible for in the carriage and delivery. That is a proposition that you are more capable of passing upon that I am.

Mr. RICHARDSON. The first object of this bill is to require the bill of lading to be presented before the railroad gives up the property.

Mr. KNAPP. Let me say in that connection that in the bill of lading which was presented by the joint committee, and which we have under consideration, there is this provision which I think is of great practical value, entirely proper, and which, as a contract, is much more favorable than the law as laid down by the courts in different States. Under what may be considered the weight of judicial authority, if I deliver brick to an agent, and he certifies that he has received cement or something more valuable, the bill of lading, although in the hands of the bona fide holder, would give no right of action against the carrier. So, if there was a material alteration in the bill of lading, it would make the instrument void under well-known common-law rules. The pending bill proposes to make the railroad responsible for the property which it actually receives, although the agent might issue a bill of lading for 100 bales of cotton when he had received only 50. If he did in fact receive fifty, the railroad would be liable, and the holder of the draft drawn on the consignee with the bill of lading attached would get good title as against the railroad to the fifty bales actually delivered. More than that, it provides also for partial delivery. It provides further that alterations shall be void and not the instrument, so that if there is fraudulent alteration in a bill of lading it would not void the entire instrument, as is now the law, but the alteration would be void, and the instrument would be valid and enforcible according to its original terms, which I think is provided for in this bill. Those are both practical matters, and as it seems to me they are proper.

Mr. MANN. Supposing that an agent by mistake gives a bill of lading to the effect that he had received 100 bales of cotton, a one with two ciphers, then he takes a pen and draws it through one of the ciphers. It is the alteration that is invalid.

Mr. KNAPP. It is the alteration that is invalid, as I understand it.

Mr. MANN. The bill of lading would be good for 100 bales of cotton?

Mr. KNAPP. If actually received.

Mr. MANN. But under this bill, regardless of whether actually received or not?

Mr. KNAPP. Yes, sir.

Mr. RICHARDSON. According to the definition that you just gave, did you intend to make railroads responsible only for the number of bales of cotton actually received, notwithstanding the agent had receipted for 100 and he did not receive but 50. That being true, the agent would give a receipt for 100 bales of cotton, and the man who got the receipt would transfer to an innocent purchaser, and where then would he get his damages, from the railroad?

Mr. KNAPP. From the railroad, under Mr. Maynard's bill. If you take 50 bales of cotton to a railroad and the agent issues a bill of lading for 100 bales, and you make a draft on the consignee and attach that bill of lading which acknowledges the receipt of 100 bales, when in fact only 50 bales have been received, the bank or other bona fide transferee of those documents could hold the railroad responsible for the 100 bales.

Mr. RICHARDSON. Regardless of fraud, collusion, or cheat on the part of the agent?

Mr. KNAPP. Yes. That is the object of that provision in the bill, as I understand it. In the bill of lading which we have before us, we provide in section 10: "Any alteration, addition, or erasure, fraudulent or otherwise, in this bill of lading which shall be made without any indorsement thereof, signed by the agent or carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforcible according to its original tenor."

Mr. STEVENS. Relative to this provision requiring a railroad to be responsible for goods it did not receive, I take it the Supreme Court has held that the reason why the railroad was not responsible is because the agent has not authority to bind the company where goods are not received. Our constitutional authority is under the commerce clause where commerce actually exists. Now, have we authority to compel the railroads to be responsible where commerce does not exist, that is to say, if no goods pass there is no commerce of course. If no commerce exists what authority have we to compel the railroad to enlarge the authority of its agent, and be responsible for the goods when as a matter of fact no commerce existed.

Mr. KNAPP. As I understand that question, I do not think I can answer it.

Mr. STEVENS. It is a serious question.

Mr. KNAPP. I am very far from claiming to be a constitutional lawyer, and any opinion I might have would not be worth the serious consideration of this committee.

Mr. MANN. We can not let that statement go, Judge, because we think you are the best authority on constitutional law in relation to interstate commerce.

Mr. ADAMSON. There is one thing in this proposition, and that is to close up all equities between the carrier and shipper in order to make absolute security for the transferee of the bill of lading. If we put that condition on the railroads it seems to me that they would take charge of the finances themselves, and finance their shippers. Do you not think they would do that?

Mr. KNAPP. So far as I am able to form a judgment, I disagree with what your statement implies. I do not think any such result would follow.

Mr. ADAMSON. You do not think they would be disposed to take charge of financing themselves so far as they could.

Mr. KNAPP. When you consider the enormous extent to which these bills of lading are used as collateral security, there seems to be a necessity for making the credit valuable in that way.

Mr. ADAMSON. That is what I mean, that this is an effort to take care of the banks and securities rather than transportation.

Mr. KNAPP. I should say it is an effort not only to take care of the banks, but in taking care of them, in giving them the degree of protection to which it may be said they are entitled, you greatly benefit the public in making these securities valuable.

Mr. KENNEDY. Bills of lading are incident to commerce necessarily.

Mr. ADAMSON. A bill of lading is an evidence of contract between the shipper and the carrier that the carrier will take the goods and deliver them at the other end of the line. That is what we ought to take care of, and the business with reference to the issuance we ought not to take care of. The bankers and creditors ought to take care of the other proposition.

Mr. MANN. If Congress should by law require the railroad company to issue bills of lading to the order of consignees, and provide that the indorsement of that should pass the title; and then provide that the railroad company must take up the bill of lading when the goods are delivered, would not that cover the case?

Mr. KNAPP. It would cover the first proposition of this bill.

Mr. MANN. I mean, would not that practically cover the necessities of the case now?

Mr. KNAPP. Whether there is any legislative necessity is for the committee to decide.

Mr. MANN. I am talking about the business necessity.

Mr. KNAPP. But let me make this suggestion: You will observe what the plan is of this joint committee. There is a single bill of lading with very simple definite provisions; it is designed to be a standard bill of lading.

Mr. MANN. That is what they have been calling "uniform" bill of lading?

Mr. KNAPP. Yes.

Mr. MANN. And you propose to call it "standard" bill of lading?

Mr. KNAPP. I say it will be a standard bill of lading, under which the great bulk of miscellaneous property will be transported. There will still be special bills of lading for certain particular commodities which move under exceptional conditions, such as live stock, perishable property, and the like; but for the great bulk of ordinary dead freight movement, it is designed to have a uniform bill of lading which may be regarded as a standard. Now, as I said, the plan is to signee, so that the shipper who provides himself with those blanks, in which could be written "order of" with the name of the consignee, so that the shipper who provides himself with those blanks, or for whom they are provided by the carrier, may at his option, by writing in the words "order of" and the name of the consignee, have an order bill of lading which the carrier is required to take up when it delivers the property to the consignee.

Mr. MANN. Is it proposed to make that negotiable by indorsement?

Mr. KNAPP. That bill of lading as we propose it does not assume to change the law with respect to the negotiability of these instruments.

Mr. MANN. What is the status as to the standard bill of lading now?

Mr. KNAPP. If I may add, there appears to be now substantial agreement between the representatives of the shippers and the carriers in the official classification territory on this proposition of uniform bill of lading. I have been holding it along with a view of finding out whether some additions might not be made which would adapt it to the peculiarities of traffic moving partly by water from the southern States, and involving matters of wharfage, quarantine and the like, so that the carriers of that section also would accept it. And I may add, for your information, that several of the railroads not in official classification territory, whose representatives attended this hearing in October, such as the Illinois Central, for example, said that while they had various objections to make, nevertheless it was a great improvement over those in current use, and they took the position that whatever bill of lading the Commission shall recommend they would have it put in use and give it a fair trial.

Mr. ADAMSON. You feel that there is a favorable prospect for agreement between the shippers and the carriers that your Commission can approve?

Mr. KNAPP. That is my confident belief.

Mr. ADAMSON. That would seem to dispense with the necessity for immediate legislation, would it not?

Mr. KNAPP. Bear in mind that this bill of lading does not go to this question of negotiability; it does not go to the question of liability.

Mr. ADAMSON. But if it is agreed upon between the carrier and the shipper, it seems that that ought to settle it.

Mr. KNAPP. It leaves those questions exactly where they are today.

Mr. MANN. You have no power, and the railroads have no power, to change the status of liability—that is, negotiable liability, or negotiability of bills of lading.

Mr. KENNEDY. Do you think it would benefit interstate commerce to have the status of these bills of lading legally fixed; and the character of your answer to that question would probably determine whether we had any constitutional authority to act in the matter or not.

Mr. KNAPP. Let me answer that question in this way. I do not know of any more difficult question to answer than: When is it desirable to legislate in a new field? I have taken occasion already to say, more than once, that those are purely questions of legislative policy and not within the jurisdiction of the Commission. The Commission has no opinion about them other than that which might be entertained by any intelligent man. I may say this; you ask me if there was an agreement. There is one point of dispute which is not covered by this bill, and it is an important one.

The CHAIRMAN. The Maynard bill?

Mr. KNAPP. It is not covered by the Maynard bill, and that is in case of loss or damage in transit shall the liability of the carrier be measured by the value of the property at the place of origin or place of destination? There are some classes of shippers at present who

are very urgent that the bill of lading shall fix the measure of liability in case of loss or damage——

Mr. BARTLETT. Measure of damages?

Mr. KNAPP. Measure of damages in case of loss as the value of the property at the place of destination. That is very stoutly resisted by the carriers, and they will not consent to it. But as you observe, that is not involved in the bill pending before the committee, and we of course can not undertake to force that provision on the carrier.

Mr. KENNEDY. Is not that a matter which the courts have determined?

Mr. KNAPP. I think there is conflict of decision. In the hearing before the Commission, one of the counsel who appeared was Judge Wallace, of New York, lately the presiding justice in the circuit court of appeals for the second circuit, a very able lawyer and distinguished jurist, who represented the insurance interests; and he stated that it had been the policy of the Federal courts always to measure liability by the value of the property at the place of origin; but I think there are some States, and I believe South Carolina is one of them, where the value at destination is the measure of damages. But that is only academic, because, as I said, the Commission's idea is that we should get the best bill of lading for the public that the carriers will immediately accept and put in use. Then we will have something definite to deal with.

Mr. RICHARDSON. Is not the present statute rather persuasive on that line in this, that the law now requires the responsibility to fall upon the initial carrier if the property is destroyed on another line?

Mr. KNAPP. That goes to an entirely different question. That is an amendment to the Hepburn bill of 1906. Of course that is open to varying constructions. My personal view is that that amendment was designed to make the initial carrier liable where a loss or damage occurred on a connecting line to the same extent that it would be liable for loss or damage on its own line.

Mr. ESCH. In all the hearings before this committee on these bills for uniform bills of lading the bankers have been very largely represented. To what extent were they represented in your hearing on October 15 last?

Mr. KNAPP. They were present by their representatives, but you will observe that the banking interests, whose views are presumably reflected in this Maynard bill, want provisions of law which go beyond the jurisdiction of the Commission and outside of any bill of lading which we have had under consideration.

Mr. ESCH. Do they assent——

Mr. KNAPP. They have understood from the beginning that the Commission had no power to require or prescribe a bill of lading under any existing law which would embody the proposition contained in the Maynard bill.

The CHAIRMAN. Will you let me ask you if in your opinion all of the interests, proper, of transportation would be subserved, or can be, by orders that the Commission now has authority to make in regard to bills of lading? I speak of transportation, trying to differentiate between that and certain commercial advantages that might result from a more negotiable bill of lading.

Mr. Knapp. I don't understand that the bill of lading goes at all to the conditions of transportation, the time, or safety, or rate, or anything of that kind.

The Chairman. But it is a receipt for certain property; it is an agreement to deliver that property, after carrying it to a fixed place, to a person named, so that to that extent it does subserve the purposes of transportation, and is a factor in transportation?

Mr. Knapp. Yes, necessarily so.

The Chairman. Have you to-day, in your judgment, authority to do all that is necessary to do with respect to a bill of lading in the mere matter of transportation?

Mr. Knapp. Mr. Chairman, I do not see that the bill of lading has anything to do with transportation proper; that is, the mere movement of the property, or the rates applied to it, or the privilege of storage, or demurrage, or anything of that kind. It is the commercial element in transportation.

Mr. Esch. Is it not a regulation or practice to be followed under the language of the Hepburn bill?

Mr. Knapp. That of course is a question, is it a regulation or practice affecting a rate?

Mr. Adamson. The original purpose of a bill of lading was to make a contract in regard to transportation, was it not?

Mr. Knapp. Yes. Of course there has been no end of litigation over the liability of carriers, or whether they could exempt themselves from liability by express contract as expressed in the bill of lading. Mr. Chairman, let me try to make our situation as plain as I can in a word: It is very doubtful whether the Commission has authority, under any existing law, to prescribe a particular bill of lading, either exclusive, or to be ordinarily used with certain exceptions relating to particular kinds of traffic.

The Chairman. Could you require a carrier to issue them?

Mr. Knapp. Not under any existing law.

The Chairman. Suppose they should all refuse to issue bills of lading, would you have power over that matter?

Mr. Knapp. None whatever, in my judgment.

Mr. Bartlett. Does not the present interstate commerce law require that they shall issue bills of lading?

Mr. Knapp. Yes, give a receipt for goods.

Mr. Bartlett. The receipt is a bill of lading, with either an expressed or implied promise to carry the freight to destination, is it not?

Mr. Knapp. Yes, but I do not quite see what the Commission could do. Suppose the railroads refused to give a receipt, what order can the Commission make? It is true the act of Congress imposes the obligation, but it is one thing for an act to impose a specific obligation upon the carrier and it is another thing to provide the machinery by which that obligation shall be enforced.

Mr. Bartlett. In my State, Georgia, they are fined if they refuse to give the bill of lading.

Mr. Knapp. So I would like to make it plain that the essential features of this Maynard bill appear to me to go to questions of legislative policy which are not within the jurisdiction of the Com-

mission under any existing law and which it is your province rather than ours to determine. I have endeavored to make you acquainted, as briefly as I could, with what the Commission has been trying to do and what it hopes to accomplish in the way of securing the early adoption by a very large number of carriers, if not most of them, of a bill of lading which certainly will be a very great improvement upon those now in ordinary use.

Mr. ESCH. While the shippers and railroads in the southern and western classification territory have not been consulted very much, and have not taken much part in these deliberations before the Commission, do you believe, if the Commission agrees upon this uniform bill of lading, that it will be shown to be valuable to the shippers and railroads of the southern and western classification territory?

Mr. KNAPP. I think I can answer that with some confidence in the affirmative. As I have already stated, that is one of the matters which we are now trying to arrange. It may be desirable to make some additions which will suit the instrument to the peculiarities of traffic moving from these Southern States partly by water, because as you know the movement between the north and south is very largely not all rail, but through the ports all the way from Norfolk down, and that involves questions of wharfage, quarantine, and perhaps perils of the sea, and some things of that kind. Whether we can get one bill of lading which will answer all the purposes of the southern section of the country, as well as the official classification territory, is not yet fully determined.

Mr. MANN. Will this bill of lading contain a long list of conditions and provisions such as the ordinary bill of lading has now?

Mr. KNAPP. We brought those down to a rather gratifying degree of simplicity.

Mr. MANN. The reason I asked was whether, if that bill of lading should be agreed upon, it might not be desirable to enact a law providing that a simple bill of lading should mean all of it as a matter of law, instead of printing a long list of conditions in every bill of lading that confuses everybody who looks at it.

Mr. KNAPP. I have thought of that, and it goes to a question suggested by another member of the committee, that if we could once be assured that we have gotten what appeared to be the best bill of lading, then it would greatly simplify the matter to have it enacted into law.

I am sure I have taken too much of your time, but in that connection let me say that from time to time, during the negotiations, there has been considerable demand in certain quarters for what is called a simple bill of lading, just a receipt stating that so much property had been received to be carried to such and such a place, and delivered to so and so, without any conditions at all.

Mr. HUBBARD. Where does that demand come from?

Mr. KNAPP. In part from an organization whose officers are in Cincinnati, I believe, and who presented that view of the case at the hearing. Now the answer to that is this, and it is an answer made by a good many shippers, and I have had some strong letters of protest: We have the Federal law, and we have the law of forty-six States, and I do not know of any subject of commercial importance upon which there is such a great variety of judicial decision, or

greater conflict of authority than upon the question of carrier's liability; and those who oppose this so-called simple bill of lading state their objection in this way, that they do not know where they are. If the carrier says that it has received such and such property to be carried according to law, they say "What law;" and they prefer that the bill of lading shall contain all the conditions which the carrier will insist upon, so that they shall know exactly what its liabilities are, and what their rights are under it.

Mr. RICHARDSON. If I understand you, it is a matter of doubt in your mind as to whether the Commission now has the authority to prescribe a uniform or standard bill of lading. Now, what reason have you to believe, that if you were to exercise that doubtful authority, and prescribe a bill of lading suitable to the different sections of the country, that they would not obey that and adopt it? Would it not be to the interests of the railroads to comply with that requirement?

Mr. KNAPP. I have already said that it has seemed to me that the best course would be to secure that form of a bill of lading which is most in the interest of the public, and which the railroads can be induced to accept. You see, otherwise, as I said awhile ago, if we exercise a doubtful authority, and seek to impose a bill of lading which is not acceptable, then we have got to enter upon an indefinite course of litigation to determine whether we had any authority to make the order or not; and I have felt strongly that it was better to get the best bill of lading we could, get it adopted, put it in use; then we have a concrete thing to deal with, and if any question arises under that bill of lading which is within the jurisdiction of the Commission, it can be determined under complaint and answer just as well as a rate.

Mr. ESCH. Then you would advise no action upon this bill by the committee?

Mr. KNAPP. I do not say that. I want you to distinctly understand that this Maynard bill goes to entirely different propositions, the liability of the carrier for goods which the agent says it has received; the negotiability of the instrument, the requirement that the order shall be printed in the bill of lading—all of those are purely questions of legislative policy, and it is not for me to speak either for the bankers or for the railroads.

Mr. ESCH. You put up a very strong argument for delay. Suppose that you have a sample bill of lading, with demonstrated validity and efficacy by practice. That once secured, Congress can legislate and make it law?

Mr. KNAPP. I am bound to say that much.

Mr. MANN. But that would not touch questions in this bill, no matter how it worked; that has nothing to do with the propositions in this bill. That would be testing the efficacy of a proposed standard bill of lading and would not affect the question one way or the other in the consideration of the propositions contained in the Maynard bill, as I understand it.

Mr. KNAPP. It has nothing to do whatever with the liability feature of the Maynard bill; nothing whatever to do with the negotiable feature of the bill.

Mr. MANN. It is the mere form?

Mr. KNAPP. Yes.

The CHAIRMAN. If that mere form is efficacious, might it not lessen the demand for legislation such as is suggested in the Maynard bill?

Mr. KNAPP. That might be.

Mr. MANN. It might, but there is no reason why it should, for it has nothing to do with the questions involved here.

Mr. KNAPP. No.

Mr. ADAMSON. It would demonstrate that the entire necessity remaining for the legislation related to questions of banking and currency, and outside of transportation.

Mr. MANN. We might as well say that fixing a railroad rate relates to banking and currency propositions, because banks and currency pay the railroad rates.

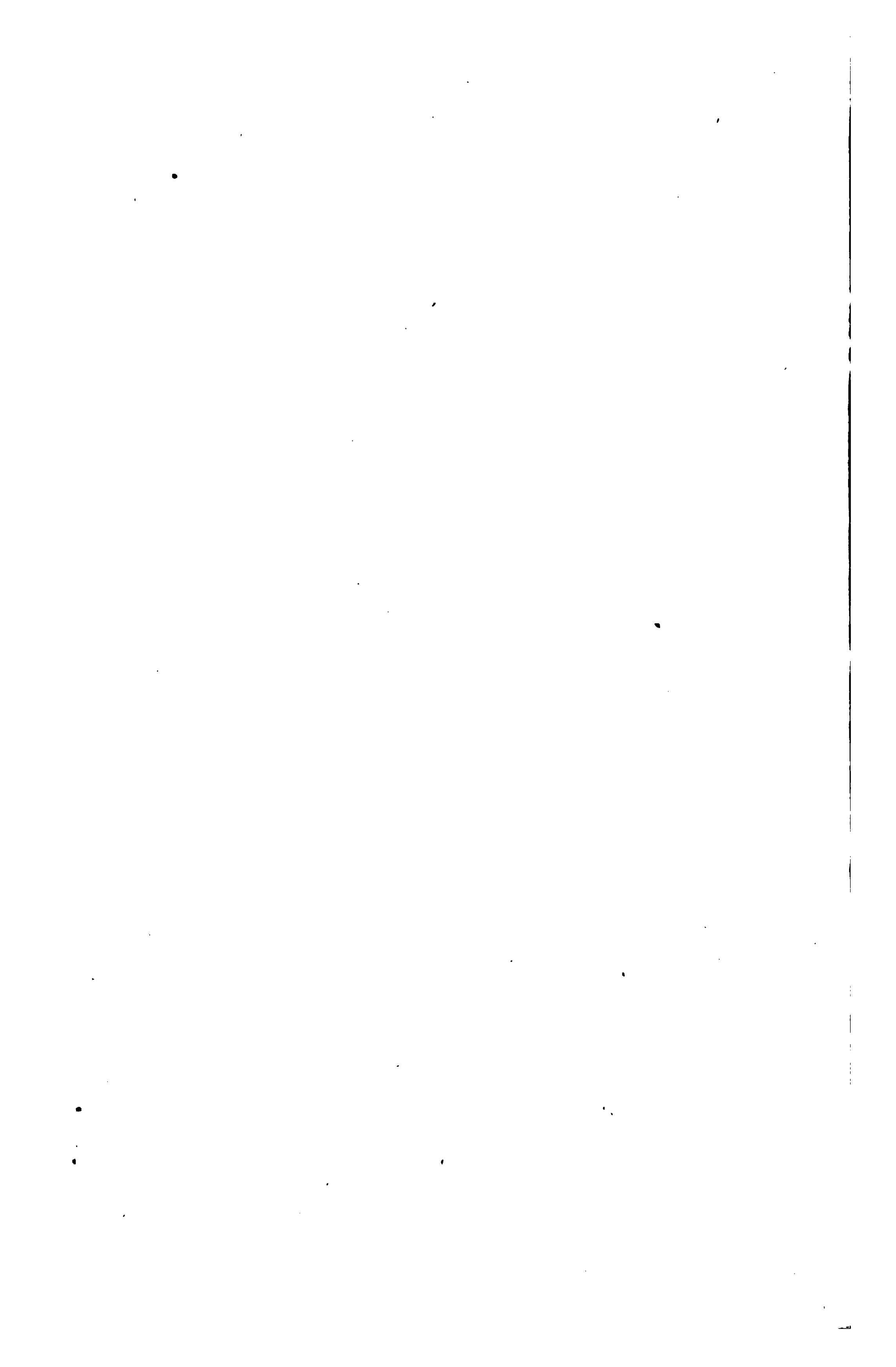
Mr. KNAPP. Upon this question of authority, let me state again the last section of this bill of lading submitted by the joint committee: "Any alteration, addition, or erasure, fraudulent or otherwise, in the bill of lading which shall be made without indorsement hereof, signed by the agent or carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforcible according to its original tenor." Manifestly the Commission has no authority to prescribe a rule of liability under any existing law.

Mr. KENNEDY. That bill as a contract would be all right if they incorporated that language into their bill of lading?

Mr. KNAPP. Yes. We have sought, I may say—I have, certainly—to meet the desires of the banking interests just as far as we could and secure acceptance of the proposal by the carriers; so, as I have said, we have provided that there shall be a blank in which the words "order of" and the name of the consignee may be written, so that the shipper at his own option, without filling out the blank, may have a straight bill of lading, and by filling it, may have an order bill of lading. If he makes it an order bill of lading, then the carrier must take up that bill of lading when it delivers the property, and any erasure or alteration, instead of voiding the instrument altogether, is itself void, and the instrument is to be enforcible according to its original tenor. It also, in effect, makes the carrier liable for the property actually received. Outside of that we have not attempted to go. As Mr. Mann says, those are matters which are entirely independent of the essential features of this Maynard bill. Can I serve you any further?

The CHAIRMAN. We are very much obliged to you.

Adjourned at 12 o'clock noon to meet again at 1.30 p. m.



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HEARINGS

BEFORE THE

U.S. COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES

ON

H. R. 14934

PROVIDING FOR UNIFORM BILLS OF LADING

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UNIFORM BILLS OF LADING.

Committee on Interstate and Foreign Commerce,
Tuesday, April 14, 1908.

Subcommittee: Hon. William C. Lovering (chairman), Hon. John J. Esch, and Hon. William Richardson.

STATEMENT OF MR. GEORGE W. NEVILLE, OF NEW YORK CITY.

Mr. Lovering. The bill upon which you desire to be heard, Mr. Neville, is H. R. 14934, to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof. It is a bill introduced by Mr. Maynard to provide for uniform bills of lading.

Mr. Neville. My desire to be heard arises from the fact that, upon reading the hearings of Mr. Commissioner Knapp, had before this committee, there seems to be an idea prevailing among the members of the committee that the bill of lading which the Interstate Commerce Commission, the railroads, and the Illinois Manufacturers' Association have been working upon would, if adopted and agreed upon, prevent any necessity for legislation of this kind. But I want to say that this legislation is just as urgent should that bill of lading be agreed upon as it is to-day.

Mr. Esch. Of course that bill of lading does not contemplate any of the commercial features which the Maynard bill contains.

Mr. Neville. No, none of that; and perhaps it would not be amiss if I should tell you gentlemen how I happened to get interested in this particular form of legislation. Before last December a year ago I was one of the merchants doing a large volume of business, practically a business running from $25,000,000 to $40,000,000 a year——

Mr. Esch. In what line?

Mr. Neville. An export cotton merchant. We buy cotton all over the South and export to every spinning center in the world. I, individually, have done more to develop the export business with Japan than any other cotton merchant, I do not care who he is. I have been over there and have been at a great deal of expense and trouble in developing that business. In December a year ago I was awakened Christmas morning by the delivery of a telegram, and after translating that telegram I found that it notified me that the Gulf, Colorado and Santa Fe Railroad Company had repudiated bills of lading for 1,500 bales of cotton which their agent had signed for the shipper who shipped to us, the last bill of lading being dated December 13. One of the rules of our office is that if we have a bill of lading in the office for a week, at the end of that time we immediately start a tracer for the contents of that bill of lading. On Christmas

eve the agent who signed this bill of lading in the interior of Texas at a point called Belton and the assistant agent of the Gulf, Colorado and Santa Fe Railroad came into my Houston office and notified us personally that the cotton covered by those bills of lading did not exist and for us not to pay the drafts. The custom in the cotton business is that drafts are paid on demand with the bills of lading attached, so I immediately consulted my counsel in New York, put the case to him, and he told me——

Mr. LOVERING. Is that bill of lading drawn in New York or at the point of shipment?

Mr. NEVILLE. At the point of shipment.

Mr. LOVERING. Is it ever drawn anywhere else but at the point of shipment?

Mr. NEVILLE. No. Now, we usually pay these drafts the day after the bills of lading are dated; this is about the average date of payment. So I immediately consulted our New York counsel, and he said that we did not have a leg to stand on excepting this: That we did start a tracer for that cotton and they acknowledged the receipt of the tracer, and the fact that the bills of lading are dated as far back as October and December 13, when they did not notify us until December 24, so I wired my Houston office to get in touch with our Texas attorney, who, by the way, is Capt. J. C. Hutchinson, a former Member of Congress, and he wired us a lengthy opinion that he thought we could hold the railroads on account of the lateness of the bills of lading and our tracers. I immediately went to Texas, and two days after the railroad company had notified us that the cotton was nonexistent we received a letter from their transportation department stating that the cotton mentioned in our tracers should be so and so, covered by bills of lading numbered so and so, taking all the 1,500 bales involved; that they were at Belton, Tex., and would be moved as soon as they could get cars to move it. Then we ran up against this proposition: That the railroad would not be responsible for the bills of lading signed by their agents. We went to the expense of getting a more detailed opinion upon the responsibility of the railroad company, and that brought me up to the point of looking after this legislation. I then discovered that the banks had had this up two years ago, but on reading their bill I told the gentlemen that they were all going on the wrong basis; that in addition to the quantity they were seeking to make the railroads responsible for the quality, which is not right. It is not just to require a railroad to open 100 barrels of cement to see whether it is sugar or not, but they should be responsible for the quantity mentioned in the bill of lading.

Now, the railroads take this position—this is no new case with me—I have been fighting this with the railroads for fifteen years. The railroads take this position: That they can not get men properly qualified to serve as local agents, whom they can rely upon to assume the proper responsibilties. Why is it? These same railroad agents sell railroad passenger tickets, they handle express freight, they handle money, and you never hear of any trouble with the railroad express agents nor the ticket agents, and why? Simply because they are under bond, and the traveling auditors go around checking their accounts once or twice a month, so it does not require one bit more of intelligence for a railroad agent to see that he has 100 bales of cotton on the platform before he signs the bill of lading than to sell

a round-trip ticket from Texas to New York and return, nor to take care of a dozen crates of chickens to go by express, and to see that he has those chickens before he gives an express receipt for them.

Mr. RICHARDSON. Can you point out a case where a common carrier has given a bill of lading for a certain amount of property that it actually received, and where that road has not been held responsible for it?

Mr. NEVILLE. No; I can not.

Mr. RICHARDSON. The cases that you complain of are where somebody has given a bill of lading or a receipt for property that the railroad did not get?

Mr. NEVILLE. Yes.

Mr. RICHARDSON. And you want to make them responsible?

Mr. NEVILLE. I do, sir.

Mr. RICHARDSON. For property that they did not get?

Mr. NEVILLE. If they signed the bill of lading.

Mr. RICHARDSON. That is, if an agent were dishonest and corrupt, and exceeded his authority in his employment, or went into a conspiracy with an outsider and gave a false receipt, that the railroad should be responsible?

Mr. NEVILLE. Yes; I think it should, and I will give you my reason for that opinion: The commerce of this country has grown to such large proportions that we who occupy the position of consignees and exporters very rarely see a bale of cotton that we handle, but we do see its equivalent in the shape of a bill of lading which comes attached to drafts. Those bills of lading bear the running number of bills of lading at the station at which that bill of lading is issued. They bear their contract number, their engagement number, and in addition they purport to describe the number of bales and the weights.

Mr. LOVERING. Does it ever give the particular numbers of each bill?

Mr. NEVILLE. Sometimes they do, but as a rule that has been discontinued, because it is so hard to distinguish the numbers. We do get some bills of lading where they run from one to five hundred, but it is an exception more than a rule.

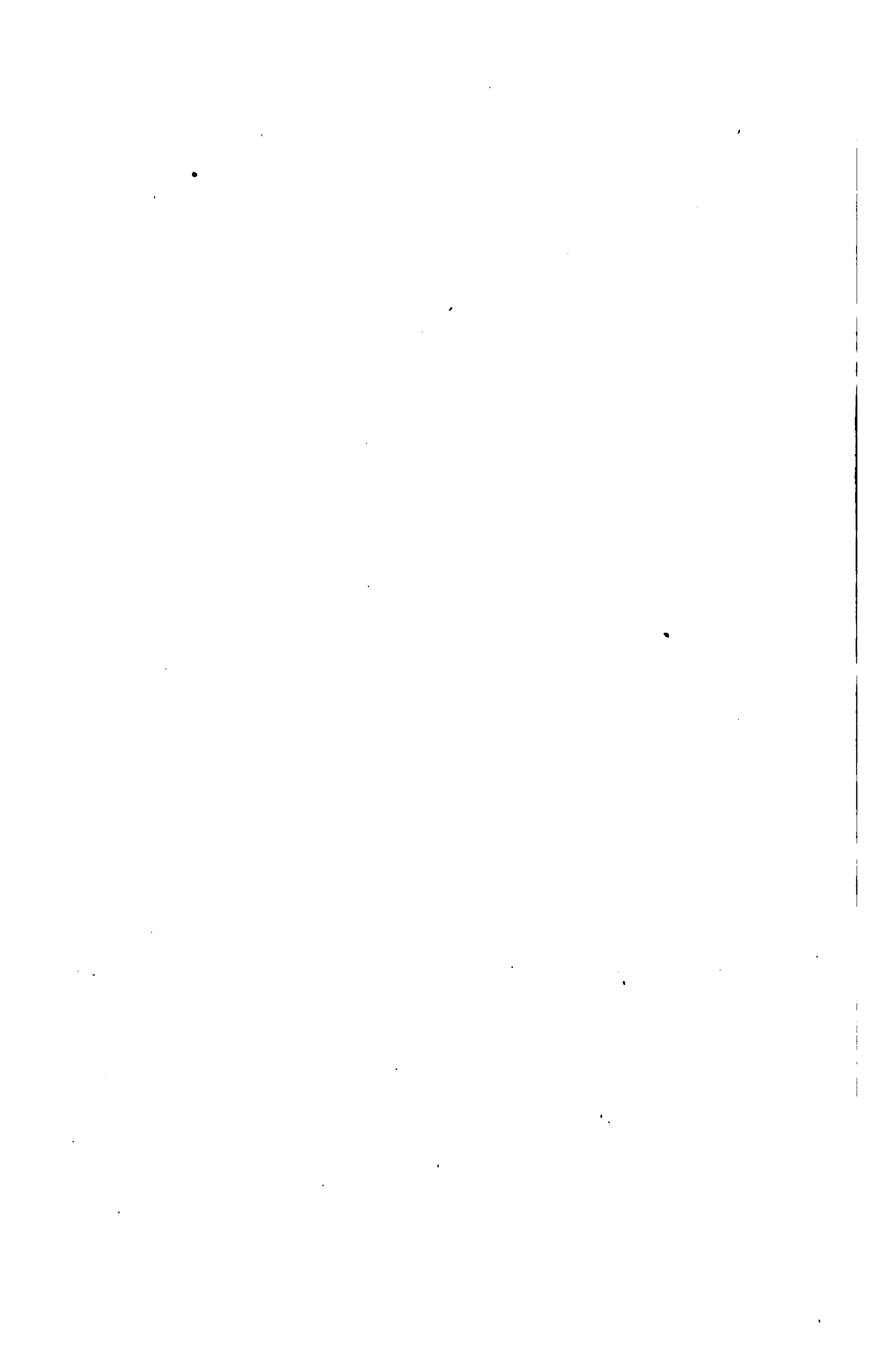
Now, I pay the draft with the bill of lading attached for two reasons: First, the confidence I have in the shipper; and second, the belief I have that the railroad agent is in possession of those goods, or was in possession of those goods when he signed the bill of lading, and I have every right to believe that he has received those goods.

Mr. ESCH. Do you know, in that connection, whether it is a practice, more or less extensive, that such agent will give the bill of lading before he has received the goods, or before he has received the full consignment?

Mr. NEVILLE. I am perhaps better qualified to talk on this matter with regard to cotton than anyone else who has appeared before you, because I have been in that branch of the business.

Mr. ESCH. That is why I will appreciate your answer.

Mr. NEVILLE. As a rule, an agent signs a bill of lading before he has received the full quantity of cotton to enable the shipper to reduce the overdraft at the bank; for instance, I am a small shipper, and I have 50 bales of cotton, and I want to ship them from somewhere in the interior of Texas to a man in Houston or Galveston who has bought the cotton from me, to be delivered in Houston or Galveston. My drays are working from the cotton yard to the railroad



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HEARINGS

BEFORE THE

U.S.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON

H. R. 14934

PROVIDING FOR UNIFORM BILLS OF LADING

VOL. 2

WASHINGTON
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1908

business through others, should not be held responsible if an employee, outside of his province and authority, perpetrates a fraud.

Mr. NEVILLE. I am not a lawyer, so I can not argue the legal point with you, but what I say is this, that where there is a railroad agent who has to sell tickets and account for the money, handles express freight and has to account for that money, and express packages and has to account for that, why should he not be made to exercise the same degree of care in handling freight that he exercises in handling his tickets and express freights? It seems to me that one safeguard will follow the other. Does not that seem logical?

Mr. RICHARDSON. Well, no; I think selling a ticket is a different thing from giving a receipt for a box of candles that he never gets. I get the ticket and I give him the money for it, and the transaction is immediately closed.

Mr. NEVILLE. That is true, but in the meantime there are very few States with any penalty for other than fraud, and it is very hard to prove it, or even to arrest the men and to bring them to justice. Take the Smith and Coffer affair in Birmingham. If you will talk to people there who are familiar with it, they will tell you that there never was a grosser fraud perpetrated than that, but they have never been able to do anything with that man from that day to this.

Mr. RICHARDSON. Yes, that is true; we can not always secure justice; the millennium has not yet come.

Mr. NEVILLE. But I beg to differ from you there; I think this law will absolutely prevent it.

Mr. ESCH. Did that take place under the Alabama statute?

Mr. NEVILLE. No; the Alabama statute has been passed since that time.

Mr. ESCH. And as the result of that?

Mr. NEVILLE. Yes; as the result of it.

Mr. RICHARDSON. That is correct.

Mr. NEVILLE. Louisiana has a very effective law. An agent who signs for goods there who has not received them has to pay a fine of $5,000 and go to the penitentiary for five years, and they have not had a case since the law was passed. That law was also brought about by a great fraud committed. But here you have all of the great agricultural crops of this country moving on bills of lading, subject to sight drafts with bills of lading attached——

Mr. LOVERING. By what rule of law are they subject to sight draft?

Mr. NEVILLE. Common usage.

Mr. LOVERING. That is all; no law; simply usage?

Mr. NEVILLE. That is all.

Mr. ESCH. The law of merchandise.

Mr. NEVILLE. Merchandise law, the custom of trade; the risk is run. We ask that a law shall be passed, not holding the railroad company responsible for the quality or weight, but for the quantity they mention in their bills of lading.

Mr. ESCH. That is, the number of packages?

Mr. NEVILLE. The number of packages, the bales or whatever it may be.

Mr. ESCH. How would you determine the degree of loss if the responsibility is only to go to the quantity? How is the responsibility as to the quality to be determined?

Mr. NEVILLE. In the event of a loss, the amount of claim you would have to pay?

Mr. ESCH. Yes.

Mr. NEVILLE. We would have the invoice giving the description of the property. When the loss was made known to us, some railroads would pay on the basis of the value of the loss ascertained, others would pay on the basis of the invoice value.

Mr. LOVERING. It is customary to settle it in that way?

Mr. NEVILLE. Yes; most of the claims are settled upon the basis of the invoice.

Mr. ESCH. I suppose the bill of lading should be made out in ink?

Mr. NEVILLE. Absolutely so. The bank presents a draft with bills of lading attached, and I probably would have to send that back, probably could not accept it, and it is returned to the correspondent who originated the draft, and they take it to the railroad agent who gives a decent bill of lading, but you can not always do that with lots of commerce.

Mr. ESCH. Is there any necessity for legislation respecting the straight bills of lading?

Mr. NEVILLE. In the minds of some people there is. The poultry dealers and people who deal in perishable goods feel very strongly on that. You will remember the testimony given by the butter shipper. That product goes on straight shipments.

Now, gentlemen, I sincerely hope that you will see your way clear to give a favorable report upon this bill, but in the meantime, if there is any legal question that you are not clear upon, if you will kindly give that question to me——

Mr. ESCH. One of the legal propositions intimated in the course of the hearings heretofore has been that this bill attempted, on the part of Congress, to interfere in what is practically a banking business.

Mr. RICHARDSON. Yes; it seems to me that it is a bill that undertakes to guarantee the banks so that they may have no losses whatsoever.

Mr. NEVILLE. Now, if I may put it this way: The banks are not interested in this matter at all until the absolute capital of the consignee is exhausted.

Mr. RICHARDSON. Isn't it interested to this extent: Suppose I were to make a shipment in conspiracy with a railroad agent, intending to ship 100 bales of cotton. I had shipped but five when he gives me the bill of lading, which I take to the bank and which the bank cashes——

Mr. NEVILLE. The local bank cashes that. You sell it to somebody. You sell it to me, to illustrate, and I pay your draft with the bill of lading attached, for two reasons: First, my confidence in you, and, second, the confidence I have in the railroad agent in signing the bill of lading without having received the goods. I take that bill of lading and put it in my safe. In the usual course of business, until that cotton arrives, or I have to give it up to the railroad company—it may be that I am buying so much of that cotton that my capital is exhausted in the bank, and I go to the bank and arrange an overdraft, giving this bill of lading as collateral, and that bank has as collateral a bill of lading for 100 bales of cotton, against which you have only shipped five bales.

Mr. RICHARDSON. And holds you responsible?

Mr. NEVILLE. And holds me responsible for the 95 bales. I, in good faith, have paid for 100 bales, because the railroad agent says that he has received 100 bales. The bank does not stand to lose a dollar until after every cent of money I have got is lost, and then they have to lose the balance. This is a measure that affects the entire commerce of this country that is handled on order bills of lading. The merchandise that is handled on straight bills of lading is not so much affected, but that is affected to a certain extent, too; but every order bill of lading that moves the agricultural crops of this country is affected by this bill, and it ought to be passed.

Mr. RICHARDSON. Suppose the State of Alabama, for illustration, should enact a law that would put a railroad agent in the penitentiary if he issued a false bill of lading. Do you not think that would reach it, provided such a law was enacted in any State?

Mr. NEVILLE. Yes; but let the United States pass a law such as this, for you can not get that law through the States, Mr. Richardson. I have tried for three years to get such a law passed in Texas, and I do not believe it can be done unless there is a great big fraud perpetrated such as was the case in Alabama and in Louisiana, which brings it strongly to the minds of the people. You can not go into Texas and use the frauds that have been perpetrated in Louisiana and Alabama as an argument for the passage of a law there, but if one shipper should lose a large amount of money in Texas I dare say that it would not be long before there would be a law. You have got to bring a thing like that home to the people, and there must be some suffering before they will remedy a defect of that kind. It is a strange thing to say but it is a fact. If you let this become a law there will not be an agent in the United States who will sign a bill of lading unless he has the equivalent for it.

Mr. RICHARDSON. The great trouble seems to be whether Congress ought to be legislating upon such matters as these?

Mr. NEVILLE. You legislate on interstate commerce; you pass laws to handle interstate commerce, but the thing that represents interstate commerce you do not want to touch.

Mr. ESCH. You know that the Supreme Court has held that an insurance policy is not commerce?

Mr. NEVILLE. I am glad you mentioned that, and I happen to have that in a decision rendered by the Supreme Court on April 6, Nos. 173 and 174, the cases of——

Mr. LOVERING. What was the decision?

Mr. NEVILLE. The point they made was this, that the insurance policy was not interstate commerce, that it was only a policy for insurance that was effective.

Mr. RICHARDSON. The courts have held that for many years back.

Mr. NEVILLE. But they held also that insurance companies in New York could not issue an insurance policy in Alabama unless they did business in Alabama according to the Alabama laws.

Mr. ESCH. Of course the courts have also held that lottery tickets carried by express companies were commerce.

Mr. NEVILLE. And that is a very nice distinction, too, I think. It has been held, however, that telegraph companies are common carriers.

Mr. ESCH. There is no question about our being able to regulate interstate commerce, and the instrumentalities of interstate commerce, but is a bank draft or a bill of lading commerce?

Mr. NEVILLE. A bank draft I do not think should be considered in connection with a bill of lading for one moment. A bank draft is only a medium for discharging a debt due in another locality in the country. It is only used to simplify matters. It merely represents money.

Mr. ESCH. Well, apply that reasoning now to bills of lading.

Mr. NEVILLE. A bill of lading represents value, represents goods. A bank draft only represents an invoice, and an invoice is substantiated by the bill of lading. The bill of lading represents the goods that are moved by the common carrier, which could not move, and there is no other way to make it move, unless the bill of lading shall be issued as a receipt.

Mr. ESCH. Of course I realize that there may be some necessity for legislation along this line in view of the enormous extent of the business, and the fact that it is a sort of credit currency.

Mr. NEVILLE. You might call it that.

Mr. ESCH. We use the bill of lading with the draft attached.

Mr. NEVILLE. Let me point out one possible contingency that might arise——

Mr. RICHARDSON. Before you get away from that point, I do not recognize any distinction between the money that a draft represents and the property that a bill of lading represents, because they are both valuable. If I go to a bank in Washington and get a draft on New York, that is a very strong evidence that I have got some money in the bank at Washington; and I take that draft over to New York, and they cash it, and the courts hold, beyond all question, that that is not commerce.

Mr. NEVILLE. But you are citing a different case altogether. You go to a bank here and get a draft on a bank in New York, and you have deposited something here to represent that draft.

Mr. RICHARDSON. I do not think that absolutely follows.

Mr. NEVILLE. You have got to give the bank here a check for it.

Mr. RICHARDSON. I might not have a dollar, or they might trust me.

Mr. NEVILLE. Well, commerce is not handled that way. We have to give a note when drafts like that are floating around. In ordinary commercial transactions you have either got to have the cash in the bank in Washington, under the circumstances which you gave, upon which you give a check, or you have got to give them a note.

Mr. RICHARDSON. I might have credit.

Mr. NEVILLE. But your credit is represented by something. If you draw a draft in the usual line of trade without a bill of lading attached to it, that draft will not be paid unless you send your bill of lading ahead and have it in the hands of the people on whom you have drawn the draft. That is the difference.

Mr. ESCH. There is another question upon the general proposition: Can Congress under the clause of the Constitution giving it power to regulate commerce between the States, regulate the banking business so far as it is affected by drafts and order bills of lading? That is a question that has presented itself to quite a number of members of the committee, I infer from the nature of the questions they put to

witnesses, and therefore I think it will be valuable to us to have any doubt removed upon that point.

Mr. NEVILLE. Mr. Henry W. Taft, of New York, is the general attorney of the cotton interests, and has been for years.

Mr. ESCH. We have his opinion already.

Mr. NEVILLE. Does he decide on that question directly?

Mr. ESCH. His opinion is directed to that phase of it. He comes to the conclusion that Congress has the power.

Mr. NEVILLE. And he refers to numerous cases.

Mr. ESCH. There is another question that was brought up. When this matter was considered by this committee some two years ago, further action was deferred in the hope that the shippers, the bankers, and the railroads might get together on a form of bill of lading. To what extent, if at all, has there been a concurrence of views of those three bodies?

Mr. NEVILLE. I will supply an answer to that.

Mr. RICHARDSON. Let me ask you if these misrepresentations on the part of railroad agents occur very often?

Mr. NEVILLE. They do not occur very often, but when they do occur they hit some one individual, and hit him hard. For instance, that man in the shingle case in Washington. I think a gentleman stated that the loss was something over $200,000. There are very few individuals who can stand a loss of that kind—very few firms—without feeling it.

Mr. RICHARDSON. Would it not be a more reasonable commercial precaution and greater business common sense, that if a man brought a bill of lading to you calling for a thousand bales of cotton that had been shipped, that you would make some inquiry into that?

Mr. NEVILLE. I would not pay the draft unless I had bought an equivalent amount of cotton from that man. As I stated before, we pay drafts on bills of lading for two reasons—the confidence in the man who takes the cotton, and the confidence in the railroad that issues the bill of lading. We may be able to do business with a man for twenty years, such as we did with that man in Belton, Tex., a man who had money to his credit at the end of every cotton season.

Mr. RICHARDSON. But that is getting down to an individual transaction.

Mr. NEVILLE. Yes, I catch your idea; at the same time the individual transactions are all made on the one thing that would govern a transaction between me and you in commerce, and that is bargain and sale, to start with, and that the bill of lading shall represent the goods. I contend that the bills of lading issued by the common carriers should be for the quantities called for.

Mr. RICHARDSON. Oh, I submit that the fraud and cheating ought to be punished, but that you ought not to hold an innocent party responsible for it.

Mr. NEVILLE. Mr. Richardson, if you make this bill a law there will not be but one more case that will happen, because with this law we can go into any State——

Mr. RICHARDSON. According to your theory, why should we not legislate touching all the affairs of life, all the morals of life?

Mr. NEVILLE. It is not so much a question of morals as it is a question of having a piece of paper that, in commerce, will be a bona fide document.

Mr. RICHARDSON. You know that it is a fact, because you are a well-informed man, that in most of the States now—some of them I know—that commercial, bankable papers, with a name on it, can go into a bank, be cashed, and if there are no funds and suit is brought upon that paper the defendant has a right to plead in the courts of the country certain infirmities; for instance, I have a right to plead, although my name may be on that paper as the original maker, that I had given notice and suit was not brought in court in the time prescribed by the statute. I do not say that that prevails in all of the States of the Union, but it does prevail in many of them.

Mr. NEVILLE. That is true.

Mr. RICHARDSON. That is an infirmity that is lacking and hidden upon the fact of that bankable paper; no man can see it, but the courts allow me to go in and point that infirmity out, that weakness, and I have complied with the statute. It seems to me that you are trying to make a bill of lading of greater force than even bankable paper holds.

Mr. NEVILLE. Do you think they are parallel cases at all?

Mr. RICHARDSON. I do.

Mr. NEVILLE. I do not; because in the one case the bank pays the note on an i dorsement as security, an indorsement by somebody else—say it is on your own indorsement, and they have taken that note on your worth; but here is a man who is a third party who has made a trade with you, say, for argument's sake, you to carry out your end of the trade, and send him a railroad bill of lading purporting to cover such and such merchandise. You attach that to a draft and it is paid, based upon the confidence the man has in you, and also upon the confidence in the railroad whose agent has signed for the goods, that the goods were in the railroad's hands. I do not think that the two cases are similar.

Mr. RICHARDSON. But I hardly think you catch the point of the comparison that my question is intended to comprehend. As relates to commercial paper, the courts of the country will allow me to come in and plead an infirmity or weakness, while with the railroads they would not be allowed to go into the courts and point out the same infirmity or weakness; they would not allow that to stand.

Mr. NEVILLE. But what is a man going to do?

Mr. RICHARDSON. I can put that question to you with regard to a thousand affairs of life—What are you going to do? We haven't a perfect system of laws throughout the country, and never will have; nothing is perfect made by man.

Mr. ESCH. You would not ask that the bill of lading under this law should be anything more than prima facie evidence of the facts disclosed on its face?

Mr. NEVILLE. That is all I ask.

Mr. LOVERING. And if you sued you would sue on the bill of lading?

Mr. NEVILLE. Yes.

Mr. LOVERING. Can you sue on a bill of lading, and merely upon the basis of the prima facie facts set forth there?

Mr. NEVILLE. I am not a lawyer, but if the law says that the bill of lading shall be prima facie evidence of the receipt of the goods, then I am willing to run the risk upon that.

Mr. LOVERING. You spoke at the beginning of the hearing, I think, of a letter or some letters that you would like to have appear in the record.

Mr. NEVILLE. Yes; I would like to have them appear in the record, as I do not think the members of the committee have seen them.

(Adjourned at 3.30 p. m.)

Following are the letters referred to:

WELD & NEVILLE,
New York, March 30, 1908.

Hon. WILLIAM P. HEPBURN,
Chairman Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR SIR: I am in receipt of your favor of the 24th instant, and note contents.

I am also in receipt of stenographic reports of the appearance of the Hon. Martin A. Knapp, chairman of the Interstate Commerce Commission, on March 25. I have read the statement of Mr. Knapp and the questions asked by various members of your committee carefully.

As one of the cotton merchants of this country, buying cotton for domestic consumption and for exportation to all spinning centers in Europe and Japan, I beg to give your committee our reasons for the necessity of the passage of House bill 14934.

I asked Hon. Mr. Maynard to introduce this bill.

There are only three States in the South to-day where the railroad company is responsible for the bills of lading signed by its agent. Alabama has a very sweeping law in this regard, brought about by a swindle perpetrated in Birmingham, Ala., and doubtless the Member from Alabama on your committee would be able to give you this law. Louisiana also has a law in this regard; likewise Arkansas. There are two or three Eastern and Western States having similar laws.

Looking at the subject from the viewpoint of a consignee, practically all of the agricultural products in this country are handled on order bills of lading, that is, the bills of lading are taken out to the order of (as a rule) the shipper notifying the consignee at destination, and for the purpose of facilitating the business of the producers and shippers throughout the country in marketing the agricultural crops these bills of lading are attached to demand drafts, which are paid on presentation through banking channels. The consignee, in turn, having sold these goods, attaches these bills of lading, with marine insurance certificates, copies of invoice, and draws against the foreign banking reimbursement at either sixty or ninety days' sight, and sells these bills of exchange to buyers in large banking centers in this country, getting cash for the bills the day the foreign bill of exchange is sold. If such a system were not in vogue, it would be impossible to finance the crops in this country, as there are no merchants with a capital large enough to do such business. These demand drafts, drawn by the shipper on the consignee, are paid for two reasons: One, the confidence the consignee has in the shipper, and, second, the confidence the consignee has in the authority of the railroad agent to sign the said bill of lading and the belief that the railroad agent would not sign the bill of lading without having received the goods mentioned therein. If a railroad agent signs a bill of lading without having first received the goods mentioned in the bill of lading, he does it as an accommodation to the shipper, to enable the shipper to get his bill of lading in bank that day, thereby enabling the shipper to reduce his bank debit by depositing the demand draft on that day. Therefore, if the goods were not delivered to the railroad agent, how is the consignee to know that the goods were not delivered?

When you consider the immense volume of business done in this country in agricultural products on which trade custom (in the development of the business) has put a certain form of negotiability to an order bill of lading, does it not seem reasonable that some interstate law should be enacted that would put the liability for the goods mentioned in the bill of lading as having been received by the railroad company and signed for by a duly authorized agent on the railroad company for whom this agent acts?

Should the question of the liability of the railroad companies for goods signed by their duly authorized agents ever be questioned by foreign bankers and foreign importers, the business of this country would be hampered to such an

extent that someone would have to carry the load from the time the farmer sells his product, whatever that may be, either wheat, corn, oats, or cotton, from the initial point until such goods arrived at a port and were alongside of the wharf at which the vessel was then loading, and the bill of lading signed by the captain of such ship or the agent of some regular ocean line. You can readily see that this would be imposing an expense on the agricultural products which, in the aggregate, would be enormous. In most sections of the country it would be impossible to finance such shipments.

This question is being agitated now in another form and has been for the last twelve months, by very large English bankers, who handle large quantities of American cotton for the importers in their country, and I inclose herewith a circular issued by these banks. This agitation does not directly bear on the causes which call for the passage of the bill now under discussion before your committee, but it is leading to those causes, and as one who is actively engaged in the export business, I can see that by another cotton season we may have the question of the liability of the common carrier issuing its bill of lading questioned by these same bankers.

Assuming that the present cotton crop now being marketed will be as large as estimated by the Census Department, about 11,250,000 bales, and taking an average value of $60 per bale, you get the value for the cotton crop of this country $675,000,000, and, with the exception of cotton that is sold locally to mills located in the cotton-producing States, every bale of his cotton is shipped on an order bill of lading before it finally reaches the spinners. Now, if the integrity of the railroad's agent's bill of lading is questioned by the importers and the foreign banks who advance money to the importers to finance these crops, the present method of handling the crop will have to undergo a decided change, which, to my mind, will add a great deal of unnecessary expense, which the producer will have to stand.

I was in attendance at the hearing had by the Interstate Commerce Commission last October, when the uniform bill of lading was under discussion, representing the same commercial interest of New York City that I represented before your committee. The conferences had by the Interstate Commerce Commission and the railroads have done a good deal to bring about a more simple form of bill of lading, which, if adopted by the railroads, will have done a great deal to eliminate many of the causes for confusion that arise to-day in the handling of the commerce of this country; but, even though the railroads and the Interstate Commerce Commission do agree on their form of bill of lading, the commercial interests are still in the same chaotic state as they are today as regards the liability of the railroad company for a bill of lading signed by its duly accredited agent.

What the commerce of this country wants, and what the various members of the commercial organizations throughout the country I have met believe is in the power of Congress to do, is to have a law enacted by Congress fixing the liability on the carriers for a bill of lading signed by their agents, when they sign a bill of lading without the receipt of the goods, and in addition thereto punishing the railroad agent who signs such a bill of lading, and not only that, but to punish the shipper who negotiates a bill of lading, knowing that all the goods have not been delivered to the railroad company which are purported to be shipped by the bill of lading which he negotiates.

I write you as above because in the questions asked Hon. Mr. Knapp by the members of your committee and in some of the questions asked at the hearing before your committee on the 20th instant the impression seemed to prevail among some of your members that this bill was introduced entirely in behalf of the bankers. While the bankers are to a certain extent affected, the people who suffer in case of loss are the commercial interests represented by the consignees who engage in the export business or who handle on a large scale for local consumption, and these are the ones with the largest interest in the bills.

I must apologize for the length of this letter and my only excuse is the importance of the subject.

Yours, truly,

GEO. W. NEVILLE.

COTTON EXCHANGE,
Liverpool, July 26, 1907.

DEAR SIR: A conference was held here on the 24th instant to consider the various forms of bills of lading used in the transport of cotton from the United States to European and other foreign ports.

The bills of lading under consideration were the "Exchange bill of lading," which it had been proposed at a meeting held in Galveston to use in substitution of the so-called ocean bill of lading; the so-called ocean bill of lading itself, the dangers in connection with which were one of the chief reasons for holding the conference; the through bill of lading; and the port bill of lading.

The conference was attended by duly authorized delegates from the European and Galveston cotton exchanges, and associations of cotton spinners, bankers, shipowners, charterers, and underwriters as enumerated in the list inclosed, that is to say, from every interest concerned in the safe transport of goods from point of shipment to ultimate destination, except the railroad inerest and shippers from interior points. Railroad companies were invited to send delegates, but could not see their way to do so, and as it was found impossible to obtain delegates who would represent the shippers as a corporate body, the Bremen, Havre, and Liverpool cotton exchanges, who had invited representative bodies to send delegates to meet in conference, could not take upon themselves the responsibility of inviting individual firms.

The resolutions passed by the conference are attached hereto and were adopted unanimously.

Your attention is particularly drawn to clauses 3 (a), 4, and 5 of the resolutions, viz:

3 (a). That no bill of lading will be satisfactory except a through bill of lading so drawn as to establish the continuity of responsibility of the several carriers from the interior point to the ultimate European or other foreign destination.

4. That the railroad companies be approached with the request that in order to insure validity of through bills of lading their agents at the compress or junction points only should be permitted to sign such bills of lading.

5. That a subcommittee be appointed to draw up a report of this conference and to take such steps as may be necessary to carry out the above resolutions and to support any movement they may think fit for obtaining the adoption of a uniform through bill of lading.

In connection with clause 4 it was alleged at the conference that during the past season numbers of through bills of lading were issued at wayside stations for small lots and were often signed by men temporarily employed and not by regularly constituted agents, and that this practice, apart from the inconvenience caused by the excessive number of bills which would accumulate before a round shipment was completed, might constitute a real danger in case of claims, owing to the men who signed the bills not being in the regular employ of the company. As this is a matter which is probably within the control of each railroad individually, the conference respectfully asks that, should the alleged practice be in vogue on your road, your company will grant the request expressed in clause 4.

The request for a *uniform* through bill of lading arises from the inconvenience which is now caused by the numerous forms in use, and it is urged that if the railroads could see their way to adopt a form which, while preserving the distinctive appearance favored by each company for its own purposes, would be uniform in the wording and in the order in which the clauses would follow each other, bankers and traders would then know exactly what were the terms and conditions of the document without being under the necessity of reading each railroad company's particular form.

The conference trusts that the railroads will take up as soon as possible this request for uniformity, and in view of the revision which the bill of lading will then undergo it respectfully suggests certain alterations as shown in the form attached hereto.

The clauses are taken from a bill of lading in common use and, no doubt, are in a more or less similar form in every bill of lading.

The suggested amendments are in italics.

Clause 4 of the alterations submitted is framed as a suggested improvement which would carry out the desire expressed in 3 (a), viz, that a through bill of lading should be so drawn as to clearly establish the continuity of responsibility of the several carriers from the interior point to the ultimate European or other foreign destination.

The only material alteration suggested is the clause relating to the basis of compensation in case of loss. This, it will be seen, proposes to change the basis from the value at time of shipment to the value on the day when the loss is ascertained.

Under modern conditions of commerce the basis of settlement as it now stands imposes upon traders an amount of risk which they are unable to eliminate while the clause remains unchanged. In the cotton trade a merchant buying cotton in America immediately covers himself against fluctuations of the market, which may take place before its arrival, by selling an equal quantity for future delivery. In case a claim for nondelivery should be substantiated against a railroad company the present clause provides that the settlement shall be on the basis of the value at the time of shipment, but the merchant's sale of cotton for future delivery is still open and he has not received the cotton to tender against it, and therefore in a rising market he has to suffer the loss of the difference between the value at the time of shipment and the enhanced value at the time he has to buy back his contract for future delivery, though of course in a falling market the reverse would happen, and he would make a profit. The sale of covers against imports is just as much a question of insurance against changes in market values as a marine or fire policy is against loss at sea or by fire. And as the principle of all insurance is that the insurer shall be placed in the same position as if the loss had not taken place, importers claim that, if they do not receive delivery of their goods through the fault of a carrier, such carrier should place them in the same position as if he, the carrier, had duly fulfilled their contract to deliver at final destination. Should this alteration be adopted it would bring the basis of settlement more into line with that embodied in the ocean carriers' bill of lading, viz, the value of the goods on the day the ship is entered in the custom-house at the port of destination or on the last day of landing, i. e., the time the loss is ascertained. It is the uncertainty that is undesirable, and it is submitted that by adopting the proposed new basis the railroads would benefit trade and not injure their own interests, as in the long run the average would be the same to them under either system, but not to the trader.

Should the railroad companies see difficulties in the way of adopting the suggested alterations, or any of them, the conference, before the railroads dispose of the matter, asks to be favored with the reasons which may have decided the companies to reject the proposals, but it trusts that the amendments suggested will commend themselves to the companies.

On the other hand, should the companies at any time desire to make changes in their bills of lading, the conference respectfully asks that such proposed changes should be submitted to the various exchanges for their consideration, and to give them an opportunity of expressing an opinion.

From the foregoing it will be seen that there may be considerable difficulty in negotiating bills of exchange drawn in the interior except they are accompanied by through bills of lading, therefore the conference respectfully urge the railroad companies to take this matter up at once as a question of urgency.

Yours, faithfully,

——— ———,

Chairman of the Conference.

ASSOCIATION OF LIVERPOOL CLEARING BANKERS,
Liverpool, August 29, 1907.

DEAR SIR: You are doubtless aware that during the cotton season 1906–7 the practice materially increased, especially in Texas, of shipping cotton from an interior point, financed by a bill of exchange dated at such point, with bill of lading attached as collateral purporting to be dated at the seaport whence the cotton was intended to be ocean borne. These bills of lading stated that the cotton had been "shipped or received for shipment," whereas at the time the bill of lading was issued the goods were almost invariably still lying at the interior point.

A further serious irregularity was that, in many cases, the bills of lading were signed by parties not duly authorized to sign on behalf of the ship or line of steamers named in the bill of lading.

It was obvious that documents containing irregularities of this kind could not be regarded as satisfactory collateral. Accordingly, a conference was held in Liverpool on 24th ultimo to consider the question generally. The conference was attended not only by representatives of the cotton industry, but by shipowners, underwriters, and bankers.

We inclose an official report of the proceedings of the conference and beg to draw your pointed attention to the resolution contained on page 7 of the report.

That resolution was passed unanimously and it has the support of the whole of the English banks engaged in financing cotton, and also of leading banking interests of the Continent.

It is now essential that steps be taken to give effect to the terms of the resolution, and our object in drawing your attention to the proceedings is to enlist your valuable support in the abolition of irregular bills of lading and the employment only of the two classes of bills of lading approved by the conference, viz:

(a) A through bill of lading so drawn as to establish the continuity of responsibility of the several carriers from the interior point to the ultimate European or other foreign destination; or,

(b) A port bill of lading duly signed on behalf of the steamer by the captain or other authorized agent after receipt of the goods into the custody of such captain or other authorized agent at the port of shipment.

We, together with all the bankers represented at the conference, take so serious a view of the dangers to which shippers, merchants, brokers, and bankers are exposed by the irregularities referred to, that we feel it incumbent upon us to inform cotton shippers and merchants and buyers of cotton drafts, that we do not see our way to continue to accept or make advances against bills of lading containing such irregularities. We have not fixed any definite date after which we will decline irregular bills of lading, but we hope and expect that every effort will be made by all concerned to procure, with the least possible delay, and at latest by the end of this year, the adoption of the forms of bills of lading approved by the conference, and the abolition of all irregular forms.

We need hardly say that if cotton bills of lading with which you are concerned are already in proper form, no notice need be taken of this circular.

Yours, faithfully,

T. F. A. Agnew,
Chairman of the Association of Liverpool Clearing Bankers.

Bank of Liverpool, Limited.
Lancashire and Yorkshire Bank, Limited,
Lloyds's Bank, Limited,
London, City and Midland Bank, Limited,
London and Provincial Bank, Limited,
Manchester and Liverpool District Banking Co., Limited,
National Provincial Bank of England, Limited,
North and South Wales Bank, Limited,
Parr's Bank, Limited,
Union Bank of Manchester, Limited,
Members of the above Association.

Committee on Interstate and Foreign Commerce,
Friday, April 24, 1908.

Committee called to order at 2.30 p. m., Hon. James S. Sherman in the chair.

UNIFORM BILLS OF LADING.

STATEMENT OF MR. HENRY W. TAFT, OF NEW YORK CITY.

Mr. Sherman. You may proceed, Mr. Taft.

Mr. Taft. I only desire to address the committee and to attempt to enlighten them upon one point, because I had some responsibility in having prepared an opinion some time ago upon the constitutionality of this proposed bill, under the provision of the Constitution which prohibits the taking of property without due process of law, that is to say, upon the question of the objection raised that it was an attempt to create a liability, or change a liability, which existed at common law, and thus disturbed vested rights. Upon that ques-

tion I prepared an opinion, which I see the gentlemen interested in this bill have had printed, and it is attached to a brief which, I believe, has already been submitted.

Upon a hearing before this committee, I think the last hearing, a further question of constitutionality arose, and it is with reference to that that I wish to make a few remarks to the committee. As I have had to make preparation for this upon rather short notice, if it is agreeable to the committee, I will also have a somewhat extended brief upon that point prepared and submitted within two or three days.

Mr. SHERMAN. And I presume within a length of time so that we will have it printed with your remarks?

Mr. TAFT. Yes. The question is a question which was raised at the last hearing, I think by Mr. Stevens, as to whether Congress has the power to deal with the subject which is covered by sections 20 I and 20 J. Those are the sections which deal with the question of false bills; that is, so-called false bills, which do not represent any actual goods delivered to the carrier as they purport to do; and Mr. Stevens, and possibly one or two other members of the committee, raised the question that as there were no goods and as there was consequently no transportation, either intrastate or interstate, therefore there was no basis for Federal jurisdiction.

Now, that, at first blush, seems to have some plausibility, and in a discussion before a Congressional committee I am not surprised that the question was raised, but I think any doubt will yield to close and careful consideration of the question.

I suppose you gentlemen are entirely familiar with the provision with reference to which I am speaking. It deals with bills which do not represent the whole of the property which they purport to deal with—that is, the section substantially says that a carrier shall be responsible for the whole of the goods which purport to have been delivered to it. Now, that section has got to be considered in two aspects, and in the one aspect it seems to me that there can be no question that it is constitutional.

If the carrier and an intending shipper in good faith enter into a written contract which purports to deal with goods which it says are to be transported to somebody outside of the State from which they are to be shipped, and those goods are actually in existence, and it is actually the intention, both of the shipper and the carrier, that those goods shall be transported, then, it seems to me, that under all of the authorities in the Supreme Court—for I shall only call your attention to such authorities if they seem to be sufficient—that is a transaction preparatory to and for the express purpose of interstate transportation. As it has been repeatedly decided, interstate commerce is not alone transportation, physical transportation, but it deals with all of the work which is preparatory to transportation, and as, I think, Chief Justice Marshall said in one of the leading cases, it is more properly described as interstate "intercourse." Now, it seems to me wholly inadmissible to admit that Congress has not the power to deal with one preparatory phase of a business transaction which has for its ultimate purpose actual, physical, interstate transportation.

Possibly it will be urged by some of those who have different views that it has been held by the Supreme Court—and it has undoubt-

edly—in tax cases, where a question as to the locality of goods was involved, that the intention of the owner of the goods is not a sufficient basis on which to base a claim that those goods had a legal status in one State and not in another. But that is not my proposition. It is not a question of intention, it has gone far beyond that, and has assumed the phase of a business transaction in which legal rights have arisen with reference to something which is in existence, which may be enforced by one party or the other in accordance with the contract. The shipper, if he has paid the freight charges, can insist upon the transportation of the goods; and the carrier, in case of the ultimate transportation of the goods, can, under that contract, sue for the collection of the freight money. I do not believe that you will find any difficulty as to that phase of the transaction being based upon facts which constitute an interstate transaction, which is a basis for Federal legislation.

Perhaps I have occupied more time upon that than was necessary, because the other question which arises is perhaps not so clear under the authorities, although I think there is no doubt upon that; and what I say in reference to the second phase of it applies equally to the first phase of the matter. Suppose—and this is a case which it is attempted to provide for in most of the cases which will arise probably—suppose that at the time when the contract of shipment is made, no goods are in existence—that is to say, suppose that the agent of the carrier and the shipper, the reputed shipper, enter into a fraudulent contract with reference to goods that have no existence. That is the case which I think suggested the question by members of the committee as to whether there was a basis for Congressional legislation. Now, does that afford a basis for Congressional legislation; is that an interstate transaction within the meaning of the Constitution? Well, if dealt with entirely disconnected from the rest of this bill, that is as a mere question whether a fanciful and imaginary arrangement has been made for the purpose of defrauding somebody, where there is nothing else on which to base Federal jurisdiction, you might have a question about which there might be some doubt, but that is not this case. You are attempting here to apply a remedy, to provide a means for meeting a certain general situation. You are dealing unquestionably with a question of interstate commerce—that is to say, you are dealing with bills of lading which are symbols of the goods concerning which the parties negotiate.

Now, you go on by this bill and say that those bills of lading, the order bills of lading, shall contain certain things. They shall contain these words: "To the order of;" they shall make certain provisions with reference to the parties; they shall contain certain conditions in relation to transportation with which they purport to deal. You are dealing in that bill with a subject-matter which is interstate commerce under the decisions which I will give you in the brief. The bills of lading with reference to interstate shipments are instrumentalities of interstate commerce, and as such Congress may deal with them. It has dealt with them in the Harter Act, and the Supreme Court in a number of cases has said that it has the power to deal with them, because they represent the kind of a transaction that the Constitution contemplates that Congress shall deal with.

Now, you propose to take that situation; you propose to deal with the question of interstate commerce represented by these bills of lading. You make certain provisions as to what they shall contain, with the obvious purpose of eradicating an evil and putting this business upon a safe and harmonious basis. That is interstate commerce. In your discretion you say: We can not adequately provide for that interstate commerce; we can not adequately provide for the scheme proposed to be enacted here without protecting people who get that kind of bills of lading against abuses, without protecting the interstate commerce which is usually represented by these bills of lading against fraud by having false bills of lading issued, which purport to represent that kind of commerce but as a matter of fact do not.

Now, you will find that from the earliest days it has been held that Congress may not only deal with a particular transaction which is interstate commerce, but may deal with any other fact which in their judgment bears upon that transaction, whether directly or indirectly, and if you think that this arrangement of interstate commerce, through the safeguards provided in the earlier sections of this bill, require that it shall be further protected by creating this liability upon false bills of lading, then, in my judgment, your discretion can not be reviewed by the courts. It is for you to determine whether that subject is so involved in the other as to require that you should deal with it, and if you think so, that makes it constitutional.

Now, I did not want to deal with cases, but from the earliest day, under the doctrine of implied powers, that sort of thing has been dealt with. The leading case upon the subject, you will recall, dealt with the provision of the Constitution which authorizes Congress to establish post-offices, and Chief Justice Marshall said that it was to be implied from the provision of the Constitution that Congress should have the power to establish post-offices; that they would likewise have the power to maintain post-offices and transport mails from office to office. That is all implied out of the provision merely to establish post-offices. And not only that, the further implied power which he recognized comes closer to this, because it was out of that provision alone that he said the power was to be implied of punishing, under the Federal law, a person for stealing a letter out of the post-office or for robbing the mails. Of course, such an act as that is essentially a local act, and presumably could be adequately punished under the State law, but yet he held, and there have been many cases of a similar character that have been decided since, that if the "beneficial exercise"—I think that was his exact expression—of the constitutional power requires that matters that have some indirect connection with it should be dealt with by Congress, Congress has the power to deal with them.

Now, to sum up, in the first place, there is not any question, in my judgment, that these sections are constitutional in so far as they may be held to deal with a case where the two parties in good faith deal with reference to the goods which are in existence, and which are delayed in delivery to the carrier, and subsequently are not delivered, because that transaction itself, quite apart from the question of actual physical transportation, is an interstate transaction and subject to the jurisdiction of Congress. And, second, in the other case where the goods do not exist, and the fraud is attempted to be perpetrated, Congress has the power to deal with it. I think I

ought to say, in closing, that you can not expect that every exercise of power by Congress is going to be supported by some provision of the Constitution which deals specifically with it. That is impossible. But here seems to be a case where Congress would not be straining a point very far if they assumed that they had the power to deal with this situation, particularly if they believed that in their discretion these two sections need to be inserted in this bill in order to make it harmonious and complete and beneficial to accomplish the purposes expressed in the early section of the bill.

Now, I do not wish to go on any further; but if any gentleman wants to ask me any questions regarding my view of any phase of this matter I will be very glad to answer it, because I have given this general subject a good deal of consideration in the past and have studied this particular question to some extent.

Mr. KENNEDY. Your contention, Judge, is, then, that if in our legislative judgment we think that this bill should pass, of course we would only pass it with the idea that it would be of great benefit to interstate commerce?

Mr. TAFT. Comprehensively.

Mr. KENNEDY. And in order to have the legislation beneficial to interstate commerce it would have to have something in the nature of a penalty to make people, railroads and shippers make true and honest bills of lading?

Mr. TAFT. Interstate bills of lading; otherwise it would interfere with the general purpose.

Mr. KENNEDY. Then the creation by law of this liability could be supported on the theory that the liability would be in the nature of a penalty for issuing a false bill of lading?

Mr. TAFT. Yes; and there is also, I think, provided a civil liability by that section; it is double.

Mr. KENNEDY. It does provide a civil liability. The civil liability would be abundantly sustained upon the doctrine that we had the power to create a penalty.

Mr. TAFT. Quite true. It is only a question as to whether you think that, connected with the general subject, those things ought to be provided in order to make your general purpose fairly effective.

Mr. KENNEDY. I would like to ask you a question that does not relate specifically to this bill; but in the legislation that has been formulated in this committee we have been very careful, and have uniformly put words into such legislation limiting our regulation to railroads which run from one State to another.

Mr. TAFT. Yes; that is right.

Mr. KENNEDY. There is no question about that; but I would like, if it would not involve too long a discussion, to ask you your opinion as to whether or not you think a railroad, regularly chartered, entirely within a single State, is not an interstate carrier?

Mr. TAFT. Well, it may be. In this case it may be: Suppose a railroad makes a contract with a shipper to transport goods to a point which is outside of the State, but part of the route is over another line. If it makes a contract, if it assumes to see that those goods are delivered beyond the State line, I think that that will be held to be within their corporate power, and that in that case they will be held to have made an interstate contract, even though the physical act of transportation over the entire line was not performed by them.

Mr. SHERMAN. That is, so far only as the transaction is concerned covered by the contract?

Mr. TAFT. Covered by the contract, of course. Now, you have got to separate in some cases, and I think you do wisely in these bills, to express so far as it is practicable the idea that you are dealing with interstate commerce, because the omission to do that is the ground on which the Supreme Court has upset the employers' liability act. There, while they held that that act, so far as it related to railroads which at the time of the creation of the liabilities were engaged in interstate commerce, was valid, yet they said it was not expressly confined to that, and it was so mixed up with a provision which might imply intrastate transactions that they could not undertake to make a separation, and they held the law to be unconstitutional there. But I ought to say, before I drop this other subject—I forgot it at the moment, and it was referred to in one of the former hearings—but it has been held, and this will be made the basis perhaps for an argument the other way, that contracts of insurance, even though they relate to interstate transactions, are not, in themselves, interstate contracts.

Now, I think that the distinction is quite clear. In the Hooper case the Supreme Court held that a contract of marine insurance was not an interstate transaction, upon the ground that it was too remote, and was merely incidental to the transaction. Now, while a contract of insurance is a customary protection for a shipper to take, it is not involved directly in the interstate transaction itself; it is not one of the conditions upon which the interstate transaction is undertaken, and I think that the distinction is clear. A promissory note which is given in payment of an obligation incurred in an interstate transaction no doubt would not itself be subject to the jurisdiction of Congress, because it is incident to it, and the line must be drawn somewhere.

Mr. KENNEDY. Merely incident to it, and not necessary.

Mr. TAFT. Yes; it must be drawn somewhere. And it is in a certain way a matter of degree. But whereas in this case you are dealing with the question of the conditions under which the interstate transportation is undertaken, then I do not think you go beyond your discretion in dealing with every phase of that operation, and not dealing with each individual instance. You are dealing with an operation of interstate commerce, and you have a right to deal with it comprehensively.

Mr. SHERMAN. In the light of the decision in the employers' liability act, how are you going to avoid the possibility of a decision in a case like this, where you hold a road which is physically intrastate to be legally interstate?

Mr. TAFT. Well, you do in this bill, specifically limit its operation. In sections 20 A and 20 F, which are general sections, you do provide that all of the shipments referred to are the shipments which are made from a point in one State to a point in another State, and from a point in the United States to any foreign country. Now, that limits the scope of this act; that is to say, so far as its main purpose is concerned; that is the character of the commerce which you are attempting to deal with.

Now, the question as to whether something which you also deal with may happen in a single State, commerce does not make that for-

eign to this general subject of interstate commerce if it directly affects this interstate commerce. There are a great many transactions that take place within a particular State which, however, have a bearing upon interstate commerce, and those are always held to be within the power of Congress.

I will submit a little memorandum upon this so that you can have my views, and will send it over early next week.

Mr. NEVILLE. Would not the fact of an intrastate road issuing a bill of lading to a point out of the State, and where a through rate of freight is mentioned from the point of origin on this road to the destination on a connecting line—would not that make that intrastate road on that particular shipment an interstate road?

Mr. TAFT. Yes; it would, as I said a moment ago.

Mr. SHERMAN. An interstate transaction but not an interstate road?

Mr. TAFT. Oh, no. You have power to deal with an interstate transaction; indeed, you have power to deal with more than an interstate transaction. What you have the power to deal with under the Constitution is interstate commerce. Interstate commerce involves a variety of subjects, many of which are completed right in a single State, and this is one of that character of transactions, and it becomes a part of interstate commerce because of its connection with the intercourse between the States.

Mr. SHERMAN. To illustrate, give us a concrete example of a transaction that is completed within a State and yet is a transaction in interstate commerce.

Mr. TAFT. Before I do that I want to read this language from the employers' liability act, and I extracted it because I thought it in a general way applied to this situation. I think this was Justice White's language: "The test of power is not merely the matter regulated, but whether the regulation is strictly one of interstate commerce." That is, it is not the mere physical transaction with which the specific law deals, but it is a question as to whether that specific transaction affects interstate commerce.

Now, you asked me about something which happened within a State, and which is so connected with interstate commerce as that it becomes a part of interstate commerce.

Mr. LOVERING. Right there, and along that line, I would like to ask you if the matter of compressing of cotton within a State comes under our authority.

Mr. TAFT. I should think if it were a matter of manufacture——

Mr. LOVERING. I mean the compressing of cotton.

Mr. KENNEDY. That is, to put it in shape to be hauled.

Mr. TAFT. If it is the process of manufacture——

Mr. LOVERING. No; not manufacture, but it is compressed for the purpose of transporting the cotton?

Mr. TAFT. I do not think so, Mr. Lovering. I think if that is the entire act, and it is completed, and it does not relate directly to the matter of its shipment or transportation, and it is completed within the State——

Mr. LOVERING. It is done by the railroad for their own purposes, in order to put a great deal of cotton into the least space.

Mr. TAFT. Do you mean that that is subsequent to the contract for shipment, and is a part of the contract for shipment?

Mr. LOVERING. I buy a hundred bales of cotton at a compress to be shipped to my mills, and that cotton will be stopped in transit within the State, and will be put on board of one car instead of two cars.

Mr. TAFT. Then if that is directly connected with convenient transportation, and is done by the railroad as a part of the transportation, I think it is. I think probably it would be regarded as a condition of transportation, and if it started on an interstate voyage, then it would be.

Mr. LOVERING. I am glad to have that established.

Mr. TAFT. But my own opinion does not establish it. Now, you will find that the Supreme Court, in another class of cases—Judge Peckham, in one of his decisions, I can not tell just which one it was—pointed out a lot of things which would not be interstate commerce, for instance, on a shipment of cattle. Suppose a railroad established a place where it watered cattle, some place within a State. He said that that would not be interstate commerce. The local arrangement made there and the contracts with reference to them would not be interstate commerce. And you will find in that decision—I can not remember at the moment which one it was, but I think it was one of the Kansas City Stock Yard decisions—that he mentioned a lot of things that would not be interstate commerce, and I remember that particular one.

Mr. SHERMAN. What did he mention that were transactions of interstate commerce? That is what I am trying to get at.

Mr. TAFT. I will tell you one, the Northern Securities case. There was the organization of a New Jersey corporation, and the acquisition of property by a New Jersey corporation, the property being the stock of the Northern Pacific Railroad and the Great Northern Railway; and the main ground of defense there was that that was a transaction which took place under the laws of the State of New Jersey, related only to the acquisition by a corporation of the State of New Jersey, and if it was valid under the laws of the State of New Jersey, it could not be questioned under the laws of the United States, and was not subject to the prohibition of the antitrust law; and the court said, "No, that is not so." Technically it was valid under the laws of the State of New Jersey, but the purpose of it was, by a device which technically was legal, to accomplish secondarily the purpose of violating the interstate commerce law in suppressing competition among the States.

Mr. SHERMAN. And I think the Supreme Court was right in that case; but I was attempting to ascertain some concrete case relating to a shipment concluded, as I understood you it might be, within a State, and where that was part of an interstate transaction. Maybe I misunderstood you——

Mr. TAFT. No; you understood me correctly, and you wish to have some concrete case which has been the subject of adjudication, I suppose?

Mr. SHERMAN. I would prefer it. But have you not something that occurs to you now, in your judgment?

Mr. TAFT. Well, the courts have held in three or four cases, and I have those decisions here, that a bill of lading is complete within the States; the contract is complete within the State, and yet it is an instrumentality which relates to an interstate transaction——

Mr. SHERMAN. But that is not a transaction that is concluded within a State, however.

Mr. TAFT. But the contract is concluded within the State.

Mr. SHERMAN. The contract itself is, but the carriage is not.

Mr. TAFT. No; the carriage is not—well, I do not know that I can mention offhand a case, but I can, if you would like to have such an illustration, send you——

Mr. KENNEDY. The courts have recognized that a shipment from one State to another wholly within a State, the railroad not passing outside, is intrastate.

Mr. TAFT. No doubt about that; it could not be otherwise; but if it is a part of a journey beyond the line of a State, then the situation would be different.

Mr. KENNEDY. Do you not think that under our power to regulate interstate commerce we have the power to punish and stop anything that is injurious to interstate commerce?

Mr. TAFT. That is a pretty broad question, because it is a question of degree.

Mr. KENNEDY. Of course, it means seriously to impede interstate commerce.

Mr. TAFT. Yes.

Mr. KENNEDY. Suppose that the State of Pennsylvania and the coal-carrying roads that carry coke from Connellsville territory to Pittsburg would put such a rate upon coke coming from Connellsville to Pittsburg as to practically stop it from coming, stopping those manufactories that are manufacturing and largely supplying, creating, we might say, a large proportion of the interstate commerce of this country. Suppose that the legislature of the State of Pennsylvania, cooperating with those roads that are wholly within a State, put such an embargo upon that traffic as to stop it. Would it not be within our power to interfere there?

Mr. TAFT. I think the Chesapeake and Ohio case would come close to your question, a case which I think was decided in the fourth circuit. There the owners of coal mines entered into an agreement for fixing the price of what they call "western shipment coal." There was not any particular transportation in contemplation at the time, but they agreed that they would not sell coal for western shipment under a certain price. They held that that was a violation of the antitrust law, because it necessarily involved the transportation of coal across the State line when they came to transport it. But there was not any contract in existence at the time. That is your case exactly, is it not?

Mr. KENNEDY. I may be a little extreme; I think I am; but I believe we ought to amplify our jurisdiction in matters of interstate commerce, and I think we have complete power to stop anything that is generally injurious to interstate commerce.

Mr. TAFT. Well, you have to draw a line somewhere. In the Kansas City Stockyard cases, they held that contracts which were made by members of the stock-yards associations with reference to commissions and so on were not so connected with interstate commerce as to be a violation of the antitrust law.

Mr. SHERMAN. Mr. Taft, I do not think that your answer to Mr. Kennedy's question is an answer to the question which I asked a while ago.

Mr. Taft. Perhaps it is not. I only said that it came closer than perhaps any other case that I mentioned. I do not offer it as an answer to your question, because I do not think that your question is at all—this is my judgment—conclusive of the proposition, because you are attempting to define, by some particular instance, what ought not to be limited by any such narrow definition. The question is whether a thing which is done within a State is so involved in the whole subject of interstate commerce that it shall affect it in such a way as to bring it within the constitutional powers of Congress. Now, here is a case that just occurs to me—I have not examined it in connection with this matter—but in the case of Montague *v.* Lowry, which I think possibly comes closer to your question, there was an agreement among the manufacturers of tiles outside of the State of California (this was under the antitrust law) and the dealers in tiles in the city of San Francisco under which only the members of that association could get tiles at certain prices. There was a retail dealer in the city of San Francisco who wanted to purchase tiles, and could not, from somebody in San Francisco, a dealer from whom he was accustomed to purchase tiles there. Now, the only transaction he was connected with was a purchase at retail of tiles within the city of San Francisco. The point was made in that case that that transaction was wholly an intrastate transaction, and the Supreme Court held that it was so involved in the scheme which dealt with interstate commerce as that it was a subject for Federal jurisdiction. That comes closer to your proposition, does it not?

Mr. Sherman. Yes; it comes closer.

Mr. Taft. In that case of Montague *v.* Lowry, that is the other end of the line; that is the reverse. It is where the transaction was the result of an interstate transaction. Now, of course, when you come to the question of manufacture, you get a clear distinction: that is, in the Knight Sugar Trust case. There, if there is manufacture which is complete in the State, an acquisition which is complete within the State, even though it may secondarily affect interstate commerce, is not itself interstate commerce. That has recently been held in New York again. But in the case of Montague *v.* Lowry, it illustrates quite well the way in which a local transaction may be connected with a general scheme of interstate transactions so as to make it cognizable in the Federal courts, and, of course, by Congress.

Mr. Townsend. You are familiar with the decision recently in relation to the railroad laws of Minnesota and North Carolina, are you not?

Mr. Taft. I would not attempt to say that I was entirely familiar with them.

Mr. Townsend. I am not, and I did not know but that you were.

Mr. Taft. No; I have not had occasion to examine them.

Mr. Townsend. What do you understand was involved in those cases?

Mr. Taft. I do not really know which cases you are referring to.

Mr. Esch. The 2-cent rate cases.

Mr. Taft. Oh, well, that was a question of jurisdiction of the Federal court as against the State court. That was a conflict of jurisdiction, and I do not think this particular question was involved there.

Mr. TOWNSEND. No; I do not think it was directly.

Mr. TAFT. That was a question, if my recollection serves me rightly, as to whether a State court could, where it had jurisdiction primarily, be restrained by a Federal court from acting in reference to a matter which might involve a question under the Federal Constitution—might, in the last analysis, involve that question. But that is not this question.

Mr. HUBBARD. Coming back to the immediate question you have argued, and which has been suggested at this committee table, we could legislate with respect to bills of lading whether there was in fact no goods shipped?

Mr. TAFT. That was the question.

Mr. HUBBARD. I understood you to make two replies to that; first, that, although no goods may in fact be shipped, yet the transaction in giving that bill was one of a preliminary nature, and that it could be considered as coming under the commerce clause, but that there was no transaction if there was no real shipment made. Would not, then, the preliminary transaction, which was preliminary to something in fact that did not occur, come within that clause?

Mr. TAFT. It seems to me not. The courts have held that it is not transportation that limits the power of Congress, it is intercourse. They have repeatedly held that it is a broader thing than mere transportation.

Mr. HUBBARD. Are you not, then, in the position of claiming that a bill of lading merely as a contract, and without reference to what it stands for, constitutes interstate commerce just as a bill of insurance is a contract relating to goods?

Mr. TAFT. Well, as I said before, the difference between the two cases is the degree of approximateness to the contemplated transaction, the contemplated interstate commerce.

Mr. HUBBARD. There is a difference in their distance; but they are both distant from it?

Mr. TAFT. Well, one is so connected with the transaction itself—is one of the conditions of the transaction—as to be.

Mr. HUBBARD. In the case that was put at the committee table there is no transaction with which the bill of lading is in fact connected; there was no shipment, no goods represented by the bill of lading.

Mr. TAFT. I quite agree with you, and I am prepared to admit——

Mr. HUBBARD. I am not sure that I am agreeing with the conclusion drawn.

Mr. TAFT. I understand, but I do not want to be misunderstood, because I want to be somewhat responsible for my view upon the subject. If you took up a disconnected matter, the question of a false bill of lading, and said that every false bill of lading which purported to deal with an interstate-commerce transaction created a certain civil liability, and should be made the subject of a penal provision, I should say that it was very doubtful whether the mere designation, by fraud, in the body of the bill of lading, of the route as being an interstate route, would bring it within the jurisdiction of Congress. I do not mean to contend that the mere fact of the two fraudulent persons in a State putting up a scheme for issuing false bills of lading, purporting to evidence an interstate-commerce transaction, that that would make it an interstate-commerce transaction.

But my point is that if you deal with a body of that kind of transactions——

Mr. HUBBARD. With a general subject?

Mr. TAFT. With a general end in view, of making your provisions effective as to all kinds of interstate business, and say that any bill of lading which relates to that kind of business, but which is false, shall be the occasion of certain liability, and in your judgment the subject needs that kind of protection—that is, that interstate commerce needs that kind of protection—then I think it is within the power of Congress.

Mr. HUBBARD. That seems to bring out clearly the distinction between your position and that which might be implied from the questions put the other day at the committee table. The question seems to be based upon the idea that commerce was an aggregate of individual transactions, and that if one of those individual transactions failed, the bill which ostensibly was based upon it would not therefore relate to interstate commerce, while on the other hand, considering interstate commerce as a general subject——

Mr. TAFT. This part of it.

Mr. HUBBARD. Of course, and not merely as an aggregate of individual transactions, the dropping out of any one of which would leave outside the jurisdiction the bill of lading based upon it.

Mr. TAFT. Exactly so. There is a case which is quite pertinent to your inquiry with reference to the jurisdiction of Congress in relation to these things. It was one of those stock-yard cases out in Kansas City where the Supreme Court said that interstate commerce was not the mere physical handling for a transportation of the object delivered to the carriers, but that it comprehends intercourse for the purpose of trade in any and all of its forms, including the transportation, purchase, sale, and exchange of commodities between the stations of the different States, and that the power to regulate it embraces all the instruments by which such commerce may be conducted.

Mr. HUBBARD. That is based upon commodities, but in the case suggested at the committee table there were no commodities.

Mr. TAFT. This is not limited to commodities; that is only one expression:

Commerce in its simplest signification—

This is from Gibbons *v.* Ogden, which is one of the leading cases——

Mr. HUBBARD. And it was in that case that the Chief Justice held that it was "intercourse?"

Mr. TAFT. Yes.

Commerce in its simplest signification means the exchange of goods; in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange become commodities and enter into commerce; the subject, the vehicle, the agent, and their various operations become the objects of commercial regulation.

And it was in that same case that Chief Justice Marshall said that commerce is "intercourse" and is regulated by the prescribed rules for carrying on that intercourse. And in the Northern Securities case the Supreme Court said:

That commerce among the several States is a unit, and it is not some isolated transactions which go to make it up.

Mr. HUBBARD. Nor the sum of the isolated transactions?

Mr. TAFT. No. The test of power is not merely the matter regulated, but whether the regulation is directly one of interstate commerce.

Now, I do not need to say that this is a question upon which plausible argument might be made on the other side, but it is not a question, and there is not so much doubt about it in my judgment that Congress ought to hesitate to enact this provision if they think it is necessary, in their discretion, to accomplish the general purpose of this legislation.

Mr. SHERMAN. Is there some memorandum that you are going to leave?

Mr. TAFT. No; I have not got it in shape; but early next week I will send over a little memorandum.

Mr. HUBBARD. And cite such cases as you have referred to?

Mr. TAFT. Yes; I shall take occasion to cite a few more, in view of this discussion, because they may be useful to you.

STATEMENT OF MR. HARRY DOWIE, OF NEW YORK CITY.

Mr. NEVILLE. Mr. Chairman, I happened to hear this week of three or four cases of cars arriving at destination under four bills of lading wherein the contents did not agree with the bills, and I would like to have Mr. Dowie, of New York City, explain those cases to you.

Mr. DOWIE. Gentlemen, I am engaged in the poultry business and represent the National Poultry Association, also the New York City Poultry Association, an association composed of New York City dealers, commission men, and shippers, largely.

The four bills of lading of which Mr. Neville speaks I have here, and in each and every case they are straight bills of lading, not negotiable, and each and every one shows a shortage. These cars arrived in due time, and also showed a shortage. They came over the Wabash road, and each case shows a shortage.

The first bill of lading called for 80 barrels of poultry and we received only 43. The next called for 125 cases of eggs and 60 barrels of poultry, and we received 20 barrels of poultry and 125 cases of eggs. The next bill of lading called for 125 cases of eggs and 72 barrels of poultry. It was short 40 barrels of poultry and 54 cases of eggs. The next bill of lading called for 125 cases of eggs, and it was short 80 cases of eggs.

Mr. ESCH. Were they routed over the same road?

Mr. DOWIE. Over the same road, and these were routed a very few days apart—December 6, November 30, December 3, and December 25.

Mr. ESCH. Have you the original bills of lading there?

Mr. DOWIE. Right here.

Mr. ESCH. Are they written with a pen or pencil?

Mr. DOWIE. In pencil.

Mr. NEVILLE. I think it is an indelible pencil.

Mr. DOWIE. These bills of lading I personally know are proper; I mean proper for this reason, because I know the agent's signature, and I know they are correct. There is no question about their being properly issued by the railroad company. We took this matter up from the headquarters at Toledo, and they attended to it immediately. They went through Defiance, Ohio—we are shipping there—and they said there would be no further trouble about it, but there was trouble;

there was trouble in three other cases, and the shipper promised to rectify the shortage, and I think he did supply the shortage in the three bills of lading; but in regard to these four, they have not been supplied.

Mr. SHERMAN. Your claim is that the amount stated in the bills of lading was never furnished to the carrier?

Mr. DOWIE. That is right; was never received by us.

Mr. SHERMAN. But I understood you further than that. Your claim is that the carrier did not receive it, and that the shipper was the man at fault rather than the carrier?

Mr. DOWIE. There seems to be a collusion somewhere, something wrong somewhere between the shipper and the agent, my judgment is, in some shape or another. That is the conclusion we came to.

Mr. KENNEDY. The trouble in adjusting a matter of this kind is that you do not know whether the railroad company delivered all it had or whether the shipper was short in his delivery to the railroad?

Mr. DOWIE. I could answer that question. When these cars arrived in New York and the things were taken from the car, we signed according to the number of packages coming out of the car, and these packages were checked short.

Mr. SHERMAN. With an unbroken seal when they reached New York?

Mr. DOWIE. Yes, sir.

Mr. ESCH. Is that a very frequent occurrence?

Mr. DOWIE. Not as bad as that. There were other occurrences that are worse, however; one case of a farmer-appearing man who came to New York and went among some of the different commission houses and stated—for instance, he came to our house and said he was introduced by so and so, a man whom we know, and said: "I have got a car of poultry on the way, and I want to turn it over to you." We said: "All right," and we asked him questions about them—their condition, and so forth—and he answered the questions promptly. Then we asked him whom he knew around there and he named different men, knew them all, and he says: "You might as well have this bill of lading; it will be here in two or three days, and after you have seen it, send me an account sales with a check." We said, "All right." In the afternoon he comes in at 4 o'clock or so, and says: "I have been purchasing some things to take home and am a little short; can you give me something on this car, and take it out of the sales?" We gave him something, and no cars arrive. We make inquiries, and find that no such man was known there, and no such cars were shipped. It was not forgery; it was a straight bill of lading, but another man besides the agent had signed it.

Mr. HUBBARD. Signed it in the name of another man?

Mr. DOWIE. Did not sign the agent's name; another name, in which it is impossible for commission men in the East to know. They can not know anything of the names of the agents, because they are changing all the time, for there are thousands of them. To overcome a trouble of that kind you would have to ask the railroad company to stamp the bills of lading, then that would overcome anything of the kind. There are many other cases of fraud that are perpetrated.

Mr. SHERMAN. I do not believe you could overcome a fraud of that kind by legislation. To provide a stamp it is only a matter

of a few dollars, and the easiest kind of a forgery is a forgery of a stamp.

Mr. TOWNSEND. Have you taken the matter up with the railroads themselves?

Mr. DOWIE. Oh, yes; many of them. We feel toward the railroad companies that they should be treated the same as anybody else. They have the same right to protection that we have. We believe that they are overrun and beaten too much altogether. We have always found them fair with us when we went to them. In this particular case, and in many other cases, we have found them fair. We have very little trouble in adjusting our differences.

Mr. TOWNSEND. This is the history of this matter before us. Originally the bill introduced here was supported by the Bankers' Association of the United States, and after we had had several hearings, as I remember it, by their request, the matter was discontinued, because they said there was to be a meeting between the railroad men, the shippers, and the bankers, the result of which they hoped to be an agreement upon something which would be satisfactory to all concerned. I have heard no more about that bill of lading nor any other bill of lading until I saw this bill presented, and I was wondering what effort had been made to get together these various interests and have a bill that would be agreeable to all.

Mr. NEVILLE. Mr. Dowie could not answer that question, but I think I can. At the time I appeared before—the hearing has not been published yet—but we are still working on it, and I saw Mr. Knapp to-day, who said that the railroad attorney would be here on the 28th of this month, and they hoped at last to settle their differences.

Mr. HUBBARD. In the cases mentioned of shortage of shipments, had any advances been made upon them; had the bills been negotiated?

Mr. DOWIE. Oh, yes; the full advances had been paid on those.

(Adjourned at 3.50 p. m.)

[Sixtieth Congress, first session. Before the Committee on Interstate and Foreign Commerce.]

Brief as to the power of Congress under the Constitution to enact section 20-i of the bill H. R. 14934, to amend an act entitled "An act to regulate commerce."

Section 20-*i* of the proposed bill prohibits the issuance of a bill of lading until the whole of the property described therein shall have been actually received by the carrier. It further provides that "the issuing carrier shall be liable to any bona fide holder for value of any bill of lading issued by such carrier or his agent in violation of the provisions of this section, who may be injured thereby, for all damages, immediate or consequential, arising therefrom."

The question has arisen as to whether these provisions are within the power of Congress under article 1, section 8, of the Constitution, which provides that Congress "shall have power * * * to regulate commerce with foreign nations and among the several States and with the Indian tribes." The doubt implied in this question is

based upon the suggestion that until the property mentioned in a bill of lading has been delivered to the carrier interstate commerce can not begin and the entire transaction will be local and subject only to State jurisdiction.

Two classes of cases may arise in which the proposed section 20-*i* would be applicable. These are, (1) where the agent of the carrier and the shipper enter into a contract of transportation by the delivery and acceptance of a bill of lading describing goods which are in existence but have not been actually delivered to the carrier, and the transportation of which the carrier and the shipper in good faith expect to be undertaken in accordance with the conditions of the bill of lading, and (2) where, for the purpose of creating a fraudulent instrument on which to procure credit, a bill of lading is issued by the agent of the carrier to the nominal shipper describing goods which have no existence. If Congress has, under the Constitution, power to deal with either of these classes, it would be justified in enacting section 20-*i*.

1. Where the carrier and the shipper enter into a legal contract for the shipment of goods which are in existence, although not actually delivered to the carrier, an act has been done preliminary to actual interstate transportation and is one of the steps generally preliminary thereto. While it is true that the goods are not in the physical possession of the carrier, the legal rights of the carrier and the shipper with reference to them have been definitely fixed. The shipper, on the one hand, could compel the carrier to transport the goods or recover damages for its failure so to do, while on the other hand the carrier could enforce his right to collect the freight charges. Thus the interstate character of the transaction is dependent not alone upon the intention of the parties, but a step has been taken which usually precedes every shipment across the State line and has a definite legal significance. By the delivery of the bill of lading the carrier, for the purposes of transportation, has constructive possession of the goods.

Interstate commerce is not the mere handling, in the physical sense, of the object delivered to the carrier. "Commerce in its simplest signification means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange become commodities and enter into commerce; the subject, the vehicle, the agent, and their various operations become the objects of commercial regulation." (Gibbons *v.* Ogden, 9 Wheat., 229.) And in the same case Chief Justice Marshall said that commerce was "intercourse" and "is regulated by prescribed rules for carrying on that intercourse." Furthermore, commerce among the several States is a "unit" (Northern Securities Case, 193 U. S., 336), and "The test of power is not merely the matter regulated, but whether the regulation is directly one of interstate commerce." (Employers' Liability Cases, 207 U. S., 463, at p. 495.)

Acts which are appropriate and necessary although preliminary to actual transportation among the States have always been regarded as being themselves of an interstate character and as within the power of Congress to regulate. This has been held particularly with reference to bills of lading, because they are instrumentalities of the

commerce to which they refer and, therefore, subject to regulation by Congress (Almy *v.* State of California, 24 Howard, 169; Fairbank *v.* United States, 181 U. S., 283; Hopkins *v.* United States, 171 U. S., 578; The Lottery Case, 188 U. S., 321). The power to regulate commerce comprehends " all the instruments by which such commerce may be conducted " (Hopkins *v.* United States, 171 U. S., 597). Congress has already, in the Harter Act (February 13, 1893), exercised the power now questioned. That act, among other things, provides that a bill of lading shall be prima facie evidence of the receipt of the goods described therein. It has been several times before the Supreme Court, and its constitutionality has never been questioned (see Isola di Procida, 124 Fed. Rep., 942).

In Swift & Co. *v.* United States (122 Fed. Rep., 531) Judge Grosscup said that commerce included

" the intercourse—all the initiatory and intervening acts, instrumentalities, and dealings—that directly brings about the sale or exchange. * * * The whole transaction from initiation to culmination is commerce. * * * But it is not transportation that constitutes the transaction interstate commerce."

2. The quesion whether the second class of cases, where no transportation takes place or is intended ever to take place, comes within the constitutional power of Congress can not be answered without considering (1) the general purpose of the proposed legislation, and (2) whether the provisions of section 20–*i* are appropriate to accomplish that purpose and not so remotely connected with it as to be merely incidental.

Speaking of the power of Congress under the commerce clause of the Constitution, Chief Justice Marshall, in McCulloch *v.* State of Maryland (4 Wheat., 421), said:

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.

The proposed bill contains a variety of provisions concerning bills of lading all relating to shipments " from a point in one State to a point in another State * * * and from a point in the United States to any foreign country " (secs. 20–*a*, 20–*f*).

The obvious purpose is to regulate interstate transportation by defining rights arising under bills of lading which contain the regulations and conditions under which such transportation is undertaken. It would be entirely inadequate to such an end to deal only with those cases where transportation was directly involved and not with those cases where it was indirectly affected. Federal jurisdiction is not to be determined by inquiring whether there has been, in a particular case dealt with by Congress, actual transportation across the State line, but by considering whether interstate commerce as a whole is beneficially regulated.

The proposed bill assumes the existence of a carrier engaged in interstate traffic and establishes rules for the regulation of commerce directly connected with such traffic. It does not contemplate particular interstate transactions, but only the whole body of the commerce of which such transactions form a part. Congress may well believe that it can not adequately regulate that portion of interstate commerce represented by order bills of lading unless it also prohibits the issuance of similar instruments, which purport to represent such

transactions but actually do not. The provisions as to false bills do not, therefore, assume an interstate character by virtue alone of the subject-matter with which they purport to deal, but also because, in the opinion of Congress, their issuance interferes with the adequate regulation of a body of other transactions which do have such interstate character and with the orderly regulation of which they are inextricably involved.

Upon the hearing before the committee, the acting chairman asked whether the principle claimed to be applicable in the present case had ever been applied by the courts where the specific act upon which Federal jurisdiction was based was done wholly within a State. In response to this question it is sufficient to refer to the following cases:

In Brennan *v.* Titusville (153 U. S., 289) the Federal jurisdiction was based upon the act of a drummer within a State soliciting a person to purchase his goods.

In Swift & Co. *v.* United States (196 U. S., 375) a combination of dealers in meat was held to be an illegal combination within the meaning of the antitrust act. In some cases the prices regulated by the combination were for cattle which had not been brought from another State and for meat to be sold and consumed within a State. It is said in the head note: "It does not matter that a combination of this nature embraces restraint and monopoly of trade within a single State if it also embraces and is directed against commerce among the States."

In re Debs (158 U. S., 564), Debs and others during the strike in Chicago, of 1894, committed certain acts within the State contrary to the terms of an injunction forbidding all obstructions to interstate commerce or the carrying of the mail. It was held that they obstructed the mails and interstate commerce and were therefore within the Federal jurisdiction.

In Montague *v.* Lowry (193 U. S., 38), an association was formed by various manufacturers of tiles whereby the members agreed to make no purchases from manufacturers who were not members of the association and to sell no tiles to anyone not a member except at prices 50 per cent higher than those established for members. The plaintiff, a dealer in California, where the association was formed, but who was not a member, was unable on acount of the combination to purchase tiles. He brought action under section 7 of the antitrust act to recover treble damages. A judgment in his favor was sustained.

Justice Peckham said:

> It is urged that the sale of unset tiles provided for in the seventh section of the by-laws is a transaction wholly within the State of California, and is not, in any event, a violation of the act of Congress which applies only to commerce between the States. The provision as to this sale is but a part of the agreement, and it is so united with the rest as to be incapable of separation without at the same time altering the general purpose of the agreement. * * * The whole thing is so bound together that when looked at as a whole the sale of unset tiles ceases to be a mere transaction in the State of California and becomes part of a purpose which, when carried out, amounts to and is a contract or combination in restraint of interstate trade or commerce.

In United States *v.* Coombs (12 Peters, 72) a Federal act imposing a penalty for thefts of goods belonging to vessels in distress, although such thefts were committed above high-water mark and within State jurisdiction, was held a proper exercise of the power to regulate interstate commerce.

In McCulloch *v.* State of Maryland (4 Wheaton, 316), Chief Justice Marshall held that from the power " to establish post-offices and post-roads " there was to be implied the power, not only continuously to maintain the post-offices and carry mail along post-roads, but also to punish those stealing letters from post-offices or robbing the mail, on the ground that this construction was " essential to the beneficial exercise of the power." The physical act of stealing a letter in a post-office within a State is of course purely local and does not relate directly to an interstate transaction.

See, for other illustrations, Veazie Bank *v.* Fenno (8 Wallace, 533) ; United States *v.* Rio Grande Irrigation Co. (174 U. S., 690) ; Welton *v.* State of Missouri (91 U. S., 275) ; Robbins *v.* Shelby (120 U. S., 489) ; Addyston Pipe and Steel Company *v.* United States (175 U. S., 211).

The conclusion which I have reached is not affected by the principle of the decision of the Supreme Court, which hold that such instruments as policies of insurance issued in respect of goods which are the subject of transportation from State to State or to foreign countries do not involve interstate commerce. In Hooper *v.* California (155 U. S., 648) a contract of marine insurance was involved, and Justice White said that the distinction between that and an instrument of interstate commerce was based upon the fact that the former was one of " the mere incidents which may attend the carrying on of such commerce." Bills of lading, however, representing transportation by a carrier from State to State are not merely incident to such intercourse, but constitute one of the means by which such intercourse is conducted. Policies of insurance upon goods in course of transportation, on the other hand, are not directly connected with the interstate nature of the transaction. While they usually attend such commerce, they do not constitute a condition upon which it is undertaken. Their connection, therefore, is too remote to be of Federal cognizance. (See upon this point Judson on Interstate Commerce, sec. 7.)

For these reasons there is no substantial ground to doubt that section 20-*i* of the proposed bill is within the power of Congress. But even if this is not entirely clear, and yet in its legislative discretion Congress believes that the general purpose of the proposed legislation can not be effectively or beneficially accomplished without the enactment of the section, it should exercise its power and devolve upon the courts the responsibility of declaring upon the constitutionality of its action. It should not omit to take appropriate action merely because the Federal courts have not adjudicated upon an exactly similar case or because no express provision of the Constitution can be pointed out on which to base the exercise of power. As Justice Miller said in ex parte Yarbrough (110 U. S., 658), Congress should not yield to " the old argument often heard, often repeated, and in this court never assented to, that when a question of the power of Congress arises the advocate of the power must be able to place his finger on the words which expressly grant it." If there be a real doubt of the power of Congress as to but one of many features of a general scheme of beneficial legislation, it should resolve that doubt in favor of the theory that that power exists.

HENRY W. TAFT.

APRIL 25, 1908.

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HEARINGS

BEFORE THE

U. S.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES

ON

H. R. 14934

UNIFORM BILLS OF LADING

[V. 3 no. 1]

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

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UNIFORM BILLS OF LADING.

SUBCOMMITTEE OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES, WASHINGTON, D. C.,
Friday, December 11, 1908—2 o'clock p. m.

The subcommittee met at 2 o'clock p. m.

Present: Representatives Stevens (chairman), Lovering, and Russell.

Present, also, Mr. Lewis E. Pierson, of the Irving National Bank, of New York City; Mr. George W. Neville, Mr. C. F. Droste, and Mr. Henry Dunkak, of the New York Mercantile Exchanges; Mr. L. Mandelbaum, of the New York Cotton Exchange; Mr. Samuel Williston, professor of law at Harvard University, Cambridge, Mass.; and Mr. Thomas B. Paton, of New York City, general counsel of the American Bankers' Association.

The subcommittee thereupon proceeded to the consideration of the bill (H. R. 14934) "To amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereto."

The CHAIRMAN. Mr. Pierson, will you direct the proceedings?

Mr. PIERSON. If it is the same to you, Mr. Chairman, I should prefer to have Mr. Neville, of the Cotton Exchange, do so. He has been very active in the matter, and has had it in charge.

The CHAIRMAN. Very well.

STATEMENT OF MR. GEORGE W. NEVILLE, OF NEW YORK CITY, N. Y.

Chairman of the joint committee on bills of lading of the New York Mercantile Exchanges.

Mr. NEVILLE. Mr. Stevens, you will recall that at the last meeting before your adjournment last spring the Maynard Bill, No. 14934, was referred to a subcommittee of which you were chairman. The matter is of such vital importance to the entire commerce of the country that the exchanges that I represent, being chairman of the joint committee, thought we would like to get in touch with you and your subcommittee, and see how you viewed the Maynard Bill, and what objections, if any, you had to it.

Since the cases we cited to you last year, involving large losses that fell on individuals, there have been many other cases brought to our attention—some of them as recent as bills of lading dated during the month of November. When you consider these losses in proportion to the total quantity of business done throughout the country, the losses are exceedingly small; but when the losses take place, un-

fortunately they are not distributed. They usually fall on one or two or three firms who have to bear the entire brunt of them. And it does seem to the merchants who are engaged in handling the commerce of the country that with all the increase in the laws governing the operation of every other branch of business, those involving the most important part of the business (namely, the documents on which the goods change hands, and on which money is paid for them) have received practically no attention. Under the conditions existing today it is possible for a man who is disposed to do so to raise large quantities of money on raised bills of lading, if I may use that expression, or forged bills of lading; and there are very few States where that man can be touched for his wrongdoing. The innocent third party has paid those drafts because he believes that the goods mentioned in the railroad bill of lading as having been received by its agent and signed for by its agent have really been received, and that the receipt is a bona fide receipt and acknowledgment of the receipt of the goods.

It does seem hard to merchants who are doing business to have to pay out good money on a document of that kind; and then, when the loss comes, when the merchant goes to court to try to collect his money to be told that there is no law governing those cases; or, if there is any law, that the law varies in degree according to the number of different States we have. There is nothing on the subject in the United States statutes, so far as my firm or my lawyers can find it. What brought my attention to the matter, as I stated to you gentlemen last year, was the loss of $79,000 worth of cotton which we had paid for in Texas, bills of lading of the Gulf, Colorado and Santa Fe Railroad being in our possession, the first one dated on the 28th of September, and running through September and October and November, up to the 12th of November, 1906. The railroad company, in response to our earnest requests to deliver that cotton, stated that the cotton was on the platform at their station at Belton, and would be moved as soon as they could get cars to move it. On Christmas eve, at half past 12, I received a telegram from our man in Texas stating that the Gulf, Colorado and Santa Fe Railroad had notified them that there was no cotton behind those bills of lading. My lawyer in Texas, Capt. J. C. Hutchinson, wrote us and told us that there was nothing in the Texas law to give us any protection.

Mr. LOVERING. You had paid the draft?

Mr. NEVILLE. Oh, absolutely; we had paid the draft.

Mr. LOVERING. Had you paid it, or had the purchaser of the cotton paid it?

Mr. NEVILLE. I had paid it.

Mr. LOVERING. Personally? Your house had paid it?

Mr. NEVILLE. My house had paid for the cotton personally.

Mr. RUSSELL. What became of the cotton?

Mr. NEVILLE. The cotton was taken away from the railroad platform by two banks to whom this man owed money, to satisfy the debt that he owed them.

Mr. RUSSELL. They instituted legal proceedings?

Mr. NEVILLE. None whatever. They simply went there and took it.

The CHAIRMAN. They would be responsible, then, it seems to me.

Mr. NEVILLE. But that was not a question for me or my attorney, Mr. Stevens, to fight out with the banks. We had the railroad bill of lading, signed by the same agent that had signed bills of lading for them for five years. We had bought from that town, shipped by the same man that we bought this cotton from, anywhere from 8,000 to 15,000 bales a year, and had never failed to get the cotton covered by those bills of lading. And yet in that transaction, involving $79,000, the railroad company refused to honor the bill of lading; and our lawyers told us that we had no redress in the Texas courts. I went to the Texas railroad commission, composed of three gentlemen whom I know very well, and they said it was "unfortunate." I came here and put the matter up to Mr. Knapp on the basis that it might be interstate business, as there was no cotton spun in Texas, and he said: "It is an unfortunate thing, but there is nothing that we can do."

Now, gentlemen, why is it, with the increase in business in this country, with the development of its natural resources and the tilling of the soil producing bigger crops, that the medium through which these crops are turned into money is not surrounded by all the legal protection that justice demands? There must be some way out of it. In the case of ocean bills of lading, Congress has passed an act protecting them.

The CHAIRMAN. Not to the extent that you asked us to do, though.

Mr. NEVILLE. Not to that extent, simply because (if you will pardon me, Mr. Stevens, as an exporter) 90 per cent of our business is export business. When we deliver the cotton to the ship and take a port bill of lading, we have a document on which we can attach that ship in any part of the world if the goods are not delivered.

The CHAIRMAN. As I understand, all that the act you refer to does is to prevent misdescription and fraud in the way of the issuance of bills of lading; is it not?

Mr. NEVILLE. That is one of the points.

The CHAIRMAN. It does not go further, and create obligations that attach to bills of lading?

Mr. NEVILLE. It creates an obligation to this extent, Mr. Stevens: If the master of the vessel signs for the cotton as having been received, and does not in fact receive it, the owners of the vessel are not responsible for those goods on the arrival of the ship at destination in the event that they are not delivered.

Mr. RUSSELL. Did you ever litigate or try to litigate with anybody the loss of the cotton that you speak of?

Mr. NEVILLE. No; we started in to litigate it. I went to Texas myself and saw the vice-president and general manager of the Santa Fe road, and then I went to Chicago and saw the vice-president and Mr. Ripley, the president; and I instructed Captain Hutchinson to bring suit. While he was preparing the suit they came to the office and paid me the money.

The CHAIRMAN. The railroad did?

Mr. NEVILLE. Yes, sir.

Mr. RUSSELL. Who was Captain Hutchinson going to sue?

Mr. NEVILLE. He was going to sue the Gulf, Colorado and Santa Fe Railroad. I paid my money on their bill of lading.

Mr. PIERSON. Why did they pay the money?

Mr. NEVILLE. They paid me the money because they said they wanted the public to understand that they considered their bills of lading as good as a Bank of England note.

Mr. PIERSON. Did they not at first decline to pay?

Mr. NEVILLE. At first they declined to pay it; but I put the screws to them.

Mr. RUSSELL. Did not your lawyer advise you that you could recover?

Mr. NEVILLE. No, sir; he said I could not recover.

Mr. RUSSELL. Why was he going to bring the suit?

Mr. NEVILLE. He said I could not recover; but I had such faith in the common sense of people that I thought that if I could get that case before a jury I could get a verdict in my favor under the circumstances. And they paid me the money because after their traffic department had come and notified me that there was no cotton behind those bills of lading on the 24th of December, I had a letter dated the 27th from the operating department in answer to tracers that I had put out, stating that the cotton was still on their platform in Belton, and would be moved as soon as they could get the cars to move it. That is the only reason they paid me my money.

Mr. PIERSON. How about the recent case down in Houston, Tex.?

Mr. NEVILLE. That is a matter that I am not sufficiently familiar with to cite, Mr. Pierson; but I will inspect those bills of lading and all the documents, and I will send them to Mr. Stevens and write a letter about them, just to show one more case where the matter came up.

It does seem to me, Mr. Stevens, that when the merchants of the country, who pay for the raw products, come here and simply ask that the payments that they make for bills of lading be surrounded with some protection (not for the quality; we do not ask for that), they ought to have it. When a railroad agent issues a bill of lading for one hundred bales of cotton or a hundred tubs of butter or a hundred crates of eggs, and signs it, let that butter and those eggs and those bales of cotton come along, whether the eggs are all rotten, whether the butter is all rancid, or whether the cotton is all loose. When a man buys a bill of lading signed by an agent, do give us a law that the railroad can not go back on.

The railroad company will say: "Oh, we have so many men, and we can not afford to pay them big salaries. We can not get responsible men for the salaries we pay." I will defy any railroad man to show me a station on the line of his road, I do not care how remote it is, where there is an agent that signs a bill of lading for any kind of merchandise that does not sell passenger tickets and does not handle express matter. And if you will tell me of any express agent that ever defrauds an express company that is not "jacked up" by the law, or any man that sells tickets and does not account for them that is not made to make good to the railroad, then I will stop this talk.

On the legal points, Mr. Droste has one or two things he would like to put before you that happened since we came before you last spring.

I thank you very much for your attention.

STATEMENT OF MR. C. F. DROSTE, OF THE FIRM OF DROSTE & SNYDER, OF NEW YORK CITY, N. Y.

Mr. DROSTE. Mr. Chairman, I think the committee is familiar with the case that I cited in Chicago, where the Wabash Railroad issued to us a bill of lading for the receipt of 300 tubs of butter on an order bill of lading which was properly drawn and properly signed, and had all the earmarks of a correct receipt and bill of lading, including the notation that the freight had been prepaid to the railroad. That bill of lading was attached to a draft for $5,100, which we accepted and paid; and the goods did not arrive. But three days or four days after the goods should have left Chicago the house that had made this draft failed; and the day after or the second day after it failed the agent who had signed the bill of lading (and who, by the way, was the principal agent in the city of Chicago of the Wabash Railroad) telegraphed us as follows:

DROSTE & SNYDER, *New York.*

You are hereby notified to refuse payment on draft accompanying American Refrigerator Transit Company waybill No. 664, dated the 23d instant, issued to order Emerson, Marlow & Co.; notify Droste & Snyder, covering 300 tubs butter, as goods will never reach you.

H. G. NORTHRUP.

We answered to that:

Draft was paid on the 25th.

Which was three days before this notice reached us.

Where are the goods? How are they detained? Give full particulars.

We have never up to this time had one word of response. We simply know that the goods were never received by them. We know that. They signed for the goods, but they never received the goods. We know, further than that, that it has been the custom of this same station to do the same thing—to offer this shipper that accommodation on large quantities of stock; and that in this manner the railroad assisted this man in financing his business until one of his large financial backers refused to back him, and the thing went up, and we were left finally in the lurch. And now the railroad company hide behind the law which has been referred to, claiming that they are not responsible for the acts of their agent in this sort of a case. That is the case that I cited to you at the last meeting here.

Since then an exactly similar case has come up.

Mr. PIERSON. Have you gotten your money in that case yet?

Mr. DROSTE. No; we have been trying in every possible way to get it, but nothing has been done as yet. We have not commenced any legal action as yet, because we are trying peaceful methods first. But my attorneys assure me that in the State of Illinois I can have no protection; that in the Supreme Court of the United States I can get no aid. In New York State I may, but at any rate it will be at the end of long and tedious and very considerable litigation, if the railroad allows it to go to litigation.

I should say, in justice to the railroad, that there is one thing they do say in one letter here—that the goods had been attached in Chicago. I believe that 50 tubs of this stock had been attached and taken away, for which, however, the railroad company has a bond, etc. But they never notified us that such was the case; nor have

they given us the name of the party attaching it, so as to give us legal protection. They have done nothing of that kind at all.

An exactly similar case exists in Philadelphia—the case of a shipment by the same shipper—a bill of lading signed by the same railroad, for the same amount of goods, and the same amount of draft, in which the railroad company does not even claim that they ever received the goods at all. So there are two cases in one day of $10,200—600 tubs of butter signed for, none received by the consignee, and none received by the railroad.

Another case arises here in Arkansas City, Kans., dated September 15, of goods shipped on a straight bill of lading to Fitch, Cornell & Co., of New York, and a draft drawn against the bill of lading. The draft was paid; the goods have never been in the possession of the railroad at all. The bill of lading is perfect in every respect. I understand that there are two or three others of this kind, but that I can not vouch for. I have not been able locate them. This one I did locate.

This is the condition that arises constantly with our merchants. We had a similar case from Fairmont, Minn., over the Chicago and Northwestern road, where the shipment was short. The signature was for a straight car of stock, specifying so many cases of eggs and so many tubs of butter. When it arrived it was short a certain number of cases of eggs and a certain number of tubs of butter. What happened was this: There were two roads in Fairmont, Minn. (the Chicago, Milwaukee and St. Paul and the Chicago and Northwestern), both contending and striving for the business. This was the largest shipper in the town. The Northwestern agent was a little closer to him than the Chicago, Milwaukee and St. Paul man; and he said: "Now, you give me your stock; we want to concentrate and do your eastern business, and do all the business we can with you." This shipper showed him that he had not sufficient money to do all the business that he would like to do, but that if he could get a little accommodation in the way of advance bills of lading he could use that money to purchase goods from around the country and bring them into the station, and thus increase his traffic. The railroad company's agent granted it. That was carried on for several years. The man did an increasingly large business, and kept going behind a little all the time, and owing the bank considerable money. The bank got a little bit suspicious. They put in this particular draft upon us for this car for collection. They probably got wind of the fact that the goods were not really behind the bill of lading, and that the man was financing in every possible way to make both ends meet.

When they got this money paid by us, when they received telegraphic instructions that the draft had been paid, they immediately notified Mr. So-and-So that a note of his which had expired yesterday was charged to his account, and would not be renewed; and the proceeds from my check, my payment, passed to the credit of his account. You know how it is done, Mr. Banker. That closed up his account. It also made all the country checks that he had put out worthless; and the man realized that he had failed. He then went to the agent and instructed him: "This car is not full. I have not put in all that I wanted to put in there; but I am in trouble, and I wish you would rush this through to Droste & Snyder as fast as you can. Just close the car and send it along." That was to prevent the

local merchants from attaching these goods, you see. He wanted to protect us as much as he could. (All of this developed later. We knew nothing about that.) The railroad agent sent that car forward. He never even notified his local office, the Chicago office, of what he had done. He never notified us. The goods arrived, and we found them short. We entered our claim for the shortage. The Northwestern road refused to honor the claim, and said they were not liable under the laws of the State of Minnesota. I finally instituted a suit against them in the State of New York, and I was paid; but I was not paid through the courts.

The CHAIRMAN. Have not the courts of Minnesota held the railroad responsible to the full extent of that bill of lading?

Mr. DROSTE. My attorneys advise me that they have not; that they are not responsible under the law of the State of Minnesota; that we could not have won our case in Minnesota, but we could have won our case in the State of New York. There are a few States where the innocent third party is safeguarded. That was the case in the State of Illinois until quite recently; and there has been a late decision there which my attorneys advise me makes it now very doubtful whether there is any protection in Illinois.

The result of all this trouble that is constantly arising is that we as merchants, and the bankers as well, are becoming suspicious of these railroad receipts as documents evidencing property back of the draft. We can place no reliance upon them. And yet the assistance of the banker, and the merchant as well, is absolutely necessary to the country trader to enable him to do his business. It is necessary to nearly every creamery in the State of Minnesota. If so much increasing doubt is to be cast upon the bills of lading that the railroads issue, we, as merchants, must cease to pay advances upon these bills of lading, which will result in great hardship to many people who are doing business to-day in a perfectly legitimate manner. And what the merchants ask is that the railroad company be made just as responsible for a bill of lading, for a receipt, signed, representing a certain quantity, as it is reasonable that it should be. If they have not received the goods why do they receipt for them?

I can answer you that question. The reason why this is done is to augment the business of the railroad as against its competitor. That is the reason. It is not fraud between the agent and the man that is doing business. Only a very small percentage is of that kind.

It is a case of two impecunious men—the impecunious shipper who is trying to do a larger business than his capital permits and the railroad station agent who is trying to increase the business of his office. Between the two arises this collusion, innocent in itself if nothing happens; but the moment something happens the railroad company then washes its hands of it, though it has had all the profit out of it. It has had the profit out of it as against its competitor.

I am almost inclined to think that it is interstate commerce business; but how that can be reached I know nothing about. But it is beating around the bush, and giving rebate indirectly—offering the shipper an advantage which the other road will not offer him.

The CHAIRMAN. The other road is not obliged to offer it, but under the law it is a practice that they would have to extend to every other shipper.

Mr. DROSTE. Yes; well, I presume that is it. I do not think the railroads themselves would openly countenance a thing of this kind; and what is more, if we can get this bill passed, so that it becomes a criminal act on the part of the railroad agent to receipt for goods which he has not in his possession, there is very little danger that that agent will sign for this stuff simply for the purpose of increasing the business of his station. It will become a dangerous operation for him to do so.

The CHAIRMAN. Would you be satisfied with that?

Mr. DROSTE. The next step is, if a railroad company permits its agents to do this, should it not become responsible for the acts of its agents the same as I would be responsible for the acts of any agent of mine doing the same thing? Why should the railroad company have greater privileges than are granted to the individual in the way of passing a piece of paper which gets into the hands of a third innocent party, who accepts what is written on that paper as genuine and true?

STATEMENT OF MR. HENRY DUNKAK, OF NEW YORK CITY, N. Y.

Mr. DUNKAK. Mr. Chairman, I appear before you representing the New York Mercantile Exchange, composed of probably between 450 and 550 members, who are all interested in the business of handling butter, cheese, eggs, and poultry, exclusively. The bulk of these products comes from States west of the Mississippi—Illinois, Iowa, Minnesota, the Dakotas, and so on. I can cite you several instances similar to those which Mr. Droste has recited, but they would bring forth no new point. But I wish to say that the fact that the railroads are hiding behind the law and absolving themselves from any responsibility for the acts of their agents has brought the matter up before our exchange, and our executive committee is at present contemplating the passing of a resolution which will prohibit any of our members from paying sight drafts until the shipment arrives.

If that resolution should prevail, it is going to hamper the industries in which we are engaged to a great extent, and to the detriment of the shippers. As you can easily see, it will curtail their opportunities, and they will have to content themselves with a smaller volume of business. In other words, it may concentrate itself into other hands; and it is therefore, I think, a matter for congressional consideration, as the people out there are indirectly interested in this proposition as much as and even more than we are, to that extent. Furthermore, I can not myself see the consistency of the attitude of the railroads, in that where there is a slight shortage which appears on a bill of lading say (5 or 10 tubs of butter in a car), they never question their liability; but when the shortage becomes an entire car, or any large amount, they immediately hide behind the law and seek protection from it.

Another inconsistency which I explained to the Trunk Line Association at a conference which we had with them over a month ago is this: They say that they have no control over their agents; that their agents are not responsible men. Neither are our truckmen. Our drivers are not responsible men. They are not intellingent men; otherwise they would not occupy such a position. But if my truckman goes down to the pier and signs for a hundred cases of eggs, and only

delivers me eighty, I am responsible for the act of my agent. And all we ask is for the railroads to assume the same responsibility that they ask us to assume.

Another thing I might say is this: It is getting so that these things are coming up now with unfortunate regularity, and we have to do something to protect ourselves; because if once the crooks became cognizant of what an easy method of defrauding us this is, we would be mulcted to an even larger extent than we are at present.

The CHAIRMAN. That is the substance of what you want, is it; just the very thing that you suggest?

Mr. DUNKAK. We want the railroads to assume the same responsibility that they ask us to assume.

The CHAIRMAN. That is the essence of the legislation you want?

Mr. DUNKAK. Yes, sir.

Mr. LOVERING. What is the other side of this story?

Mr. NEVILLE. In what way, Mr. Lovering?

Mr. LOVERING. The railroad's side?

Mr. NEVILLE. The railroad company's side is this—I can tell you: They do not think it is fair that they should be held responsible for the acts of their agents. They do not authorize their agents to sign bills of lading unless they have received the goods. That is what they say.

Mr. DROSTE. I might say, in connection with that, that while they do not directly authorize their agents to do this, Mr. Northrup, the agent who signed these bills of lading for the Wabash Railroad, is still in the same position. The railroad company knows what he has done. The man at Fairmont, Minn. (this happened six years ago), still holds the responsible position of station agent at that station.

The CHAIRMAN. As I understand, it had been rather the custom with the Wabash Railroad at that point to do that sort of thing.

Mr. NEVILLE. Yes, sir.

Mr. DROSTE. They do that sort of thing, not only there, but elsewhere. I can cite cases to you in Nebraska where it has been done. It has been done all over the country. It is a sort of an evil that has crept in, and that is being done at various places, apparently without instructions from the railroad companies themselves to their agents, but with the winking at or the connivance of the railroads. They do not object to it.

The CHAIRMAN. Let me ask you this question: When the committee of the shippers met with the committee of the railroads to frame the uniform bill of lading that was promulgated by the Interstate Commerce Commission, a discussion of this very point was had, I presume?

Mr. NEVILLE. No, sir; it was not.

The CHAIRMAN. Why not?

Mr. NEVILLE. There was not any such discussion that I ever attended.

Mr. WILLISTON. May I perhaps speak a few words as a lawyer? These gentlemen have spoken to you of the mercantile evil, and I will not try to say anything in regard to that; but I should like to say a few words in regard to the legal aspect of the question.

The CHAIRMAN. Certainly.

STATEMENT OF MR. SAMUEL WILLISTON,

Professor of law at the Harvard Law School, Cambridge, Mass.

Mr. WILLISTON. There are or have been three legal difficulties in regard to bills of lading which have given trouble to the merchants in one way or another:

The first one was that the contract of the bill of lading was not fair in its terms, or the contract was so carelessly drawn as to be readily subject to alteration.

The second was the evil which has been especially considered here—that even though the bill of lading was perfectly drawn, perfect in its terms as a contract, still the railroad said that if it did not receive the goods when its agent signed that contract for them it was not liable, because its agent was acting outside of the scope of his authority. You will see that this difficulty in regard to bills of lading has nothing to do with the terms or the form of the bill of lading, nor even with the care with which it is written.

The third difficulty was in regard to the legal aspect of a transfer of that bill of lading with a view to transferring the property between two outside persons—that is, between the consignee and the purchaser, or between one purchaser and a subsequent purchaser. In this line of difficulties the railroad is not in the case at all, and this line of difficulties also is only to a small degree dependent on the terms of the bill of lading.

The CHAIRMAN. But the conditions of the bill of lading could define what the responsibilities and obligations of the railroad were.

Mr. WILLISTON. It could define what the responsibilities and obligations of the carrier are, but many courts hold that a purchaser of that bill of lading does not succeed absolutely to the same obligations, and especially does not succeed to the obligations that appear on the face of the bill of lading.

We were parties to the proceeding before the Interstate Commerce Commission to which you have alluded. The Interstate Commerce Commission was considering and could consider only the first sort of difficulties to which I have alluded, viz, what was a fair contract between the railroad and the shipper, and how should that contract be drawn in such a way as to preclude, as far as possible, subsequent fraud?

But it was wholly the form of the contract between the carrier and the shipper that was under consideration. That was all that could be under consideration. It is without the scope of the powers of the Interstate Commerce Commission to prescribe the liability of the railroad when it lets its agent issue a bill of lading. Indeed, they regarded it without the scope of their powers absolutely to prescribe the form; but they did recommend the form, and they in large measure followed our argument in that respect and adopted or recommended the forms that we requested; and we are very grateful to them for what they have done. But it is just as open a question under the present good form of bill of lading as it was under the old bad form of bill of lading for a railroad, when it issues its document for goods which it has never received, or leaves it outstanding after it has surrendered the goods, to deny its liability.

The third line of difficulties which the merchants and bankers have been subjected to, viz, difficulties arising from the purchase and borrowing between one another on these documents, we tried to cure by some provisions in the Maynard Bill. But we are prone to see that there is at least an argument that it is more than a regulation of interstate commerce, or that it is going beyond a regulation of interstate commerce, to prescribe what is the effect of the purchase of a bill of lading by two outside parties, the railroad not being a party to it. So that we came here with a view to seeing whether it would be possible at least for us to get some cure for the other two sorts of difficulties, viz, the difficulty in the form of contract, and the one in regard to fictitious and spent bills, if I may call them by their ordinary names.

The Interstate Commerce Commission recommended certain forms; but it doubts its power to prescribe those forms. As to some of the essential things which the Interstate Commerce Commission recommended, we should like to see Congress enact a law prescribing on the railroad those forms which are already recommended for their adoption. And we should further like to see Congress pass a law enacting that a railroad shall be liable civilly to the person injured for issuing a bill without having received the goods, and shall also be liable for leaving such a bill outstanding after the goods have been surrendered. And further, we should like provisions making it a criminal offense for a railroad or its officers or agents to issue such a document.

It seems to me clear that it is a regulation of interstate commerce to pass such provisions. I can not see that there can be any fair doubt of it. It was suggested last year by a member of the committee that where no goods were in fact received, there was no interstate commerce. But there is a contract of interstate commerce. The bill of lading is not simply a receipt; it is a contract. And I can not conceive that it is even arguable that Congress has the power to regulate the force and effect of contracts of interstate commerce of this sort, though the goods may not have been received, or may have been surrendered.

It seems to us, therefore, that the bill, in the narrower form that we now suggest, is unquestionably within the powers of Congress to enact. And in view of the evils that have been described and the importance of this business being caried on successfully in order to move the various crops of the country (we have here representatives of certain products, but the same thing might be said of almost all the great staple products of the country), it seemed to us that the committee would feel disposed to grant the limited request which we now make, and if the committee is so disposed we are prepared to draft and present a bill along those lines.

The CHAIRMAN. How far did you gentlemen communicate with the American Bar Association at their meeting with a view to having them provide a uniform bill of lading?

Mr. WILLISTON. I am the draftsman of the bills that the commissioners for uniform state laws have been considering, and therefore I am perfectly familiar with the whole situation.

The CHAIRMAN. Why is it that they have delayed action?

Mr. WILLISTON. They delayed action at the request of several railroad representatives who wanted to have a conference with the

commissioners before the draft act was finally put forth. This draft act contains a great many provisions. It has a much wider scope than anything that we are here proposing.

And as it affected (or would affect if passed) the railroads in a great many ways, it seemed to the commissioners for uniform state laws fair to grant the request of the railroads. The representatives of the railroads said that Seattle, where the meeting was held last summer, was a long way off and they could not go there. A meeting has been tentatively fixed for next spring, at which the railroad representatives are expected to be present. I may add that I myself do not expect that any real agreement can be come to with the railroads on these moot points; because, on the existing law in most places, the railroads have the advantage; and they are not disposed to surrender it unless they have to. Why should they? It is human nature. That has been the attitude of their attorneys and of the railroad men themselves with whom I have talked.

The CHAIRMAN. Have the provisions of the bill of lading prescribed by the Interstate Commerce Commission been extended beyond the railroads within the official classification?

Mr. NEVILLE. Yes, sir; all railroads throughout the country have adopted it.

Mr. WILLISTON. Have they in fact adopted it?

Mr. NEVILLE. Yes; effective January 1, except Texas.

The CHAIRMAN. January 1 next?

Mr. NEVILLE. Yes, sir. It was to have gone into effect November 1, but a great many shippers requested that the time be extended so that they could use up the forms of bill of lading that they had printed. And the old bills of lading now in use in official classification territory, while they are being used, are stamped:

> Clauses mentioned in the uniform bill of lading as recommended by the Interstate Commerce Commission are in effect.

So it is practically their bill of lading which is being used.

The CHAIRMAN. Now we are getting down to see what may be done.

Mr. PIERSON. Mr. Neville, we chance to have with us Mr. Breed, of the National Wholesale Grocers' Association. He is just here for the afternoon, and I should be glad if you would call on him.

The CHAIRMAN. Certainly; we shall be very glad to hear him. I had a communication or interview with one of the members of your executive committee—Mr. Kelly; did I not?

Mr. BREED. I think so; yes, sir.

STATEMENT OF MR. ——— BREED.

Representing the National Wholesale Grocers' Association.

Mr. BREED. I do not wish to make any extended remarks, except to say that this matter hits the people that I represent in both ways. The National Wholesale Grocers' Association, of course, has members all over the United States. They receive shipments from manufacturers from all over the United States. If they are jobbers in California, they receive goods from the East. If they are jobbers in the East, they receive large quantities of goods from the West. We in turn sell to the retailers all over the United States; and the retailers are in the same position as regards our bills of lading that we are as

regards the manufacturers' bills of lading. Both of us borrow on those bills of lading, and both of us are interested in seeing that the bills of lading represent what they purport to represent.

We conceive that the trouble here arises wholly out of carelessness—not out of design on the part of the railroads to defraud anybody, but out of pure carelessness, and out of the fact that there is at the present time no prod to force the railroads to see to it that this instrument (which is in the first instance a receipt, but is really an article that passes all over the United States and, you might say, into interstate commerce, inasmuch as it relates to an article going into interstate commerce) really represents what it purports to. And I conceive that the idea in coming to Congress is that the Interstate Commerce Commission have held that they could not give us a basic law, and Congress is the only source to which we can appeal for some basic law.

On the question of carelessness, it was clearly stated by Mr. Droste that the instances are numerous and many where we receive bills of lading and take them to the bank, only to find out at a later time that the goods were never shipped, or that the bill does not speak the truth. We have borrowed on the bill, and we are called upon to pay. I can speak for the wholesalers all over the country, and say that they are getting very nervous over the situation as they hear from their bankers. The retailers are getting very nervous all over the country as they hear from their bankers. And if the committee can find it within the powers of Congress to recommend a law that merely prescribes what both sides must concede is just, I think they should do it.

The CHAIRMAN. Suppose Congress could not see its way clear to pass a law, for one reason or another satisfactory to itself—what would be the natural course of such organizations or such businesses as yours? Would you continue to make advances just the same?

Mr. BREED. Indeed, we would not get them, probably, from the bankers, and we would not make the advances ourselves.

The CHAIRMAN. What difference would it make, for example, in getting dried fruits from California? You would get them just the same, would you not?

Mr. BREED. That is just the point—that we do not get them; that the bill of lading represents no dried fruits.

The CHAIRMAN. You would buy dried fruits just exactly the same; they would produce them just the same; you would get them just the same; and you would sell them just the same; would you not?

Mr. BREED. Oh, I suppose trade would go on; but think of the inconvenience.

The CHAIRMAN. What inconvenience? The dried-fruit man would not get his pay until he had delivered his goods. That would be the difference, would it not?

Mr. BREED. In the first instance, if we get the bill of lading and take it to our bank, and the bank refuses to advance us money on it, there is a very serious interference with commerce right there.

The CHAIRMAN. But these goods would come along just the same, would they not?

Mr. BREED. And a method of dealing that is recognized as necessary to carry on business easily and smoothly is entirely upset if you can not do business on documents.

The CHAIRMAN. I am trying to find out and make of record the consequences. What would be the consequences? Suppose that you did buy the output of a factory in California, and you received the bills of lading; the goods were slow in coming, and you took those bills of lading to Mr. Pierson, and he said, "I will not let you have a dollar on them." Under present conditions, what would you do?

Mr. NEVILLE. If Mr. Breed will pardon me, my impression is that the dried-fruit business of California is not subject to sight draft.

Mr. BREED. I believe it is not.

Mr. NEVILLE. These goods are only payable on arrival at destination.

Mr. BREED. I believe that is right.

The CHAIRMAN. Take the butter and cheese business, then, out in our country.

Mr. BREED. I should like to have Mr. Droste, who is a very practical man on that subject, answer that question. But before doing so I should like to add one thing to the remarks made by Professor Williston on the interstate commerce question, if you will allow me.

This law that we are seeking from Congress at this time is narrow. It is not a law that attempts to regulate everything, which was the idea in the minds of those who were connected with the American Bar Association. We do not seek to regulate everything. We seek practically a very narrow relief. So that if the question of delay is up, it seems to me that that should be borne in mind.

Second. We know that the question of what can be regulated by Congress, what is considered properly the subject of interstate commerce, has broadened very materially in the last four or five years, due, probably, to the insistence of the President of the United States upon the fact that interstate commerce practically controls everything; and the idea has broadened. I feel confident that in the course of time this will certainly be considered dealing in and regulating interstate commerce. A bill of lading is a contract which relates to a shipment of interstate commerce.

The CHAIRMAN. So does insurance.

Mr. BREED. Well, that opens a wide field of discussion. But you can not deny that this shipment from California to New York is an interstate shipment, and that the contract relates to that interstate shipment. You may not be able to deal with intrastate matters. Should Congress pass a law to meet this very serious situation and provide a remedy, I can say to you that I believe those who now appear to oppose it would accept it. Why? First, because it is right. Second, because it only entails upon them what? The demand that their agent who represents them shall not give a receipt unless he receives what he says he gets. That is all it entails upon them. It does not bring in anything else. It is not an involved situation. It is something that it is right for them to do, and something that it is right for us to ask.

If such a bill were passed, and any little question of law arose as to whether this thing could be defeated were it carried to the Supreme Court of the United States, it would never arise, gentlemen, because both sides would accept it. It is right. It is not something that is serious to the other side. All they have to do is to demand that their own agents shall not commit a fraud. They are not entitled, in other

words, to sit quietly and let something be done which practically works a fraud on us and as a result of which we may suffer a very serious financial loss.

Third. The railroads and everybody agree that it is a desirable and necessary thing to have business methods as easy as possible. The method of utilizing bills of lading for raising money is a thing that is almost necessary in business, and Mr. Droste can probably give you exact and specific instances on that point. I hope you will bear that in mind. It is right to ask it; it is right for the railroads to grant it, and I do not think that they would ever object to it once it is granted, providing it is not too broad and does not drag in legal questions which they might have a chance to dispute in courts of law.

FURTHER STATEMENT OF MR. C. F. DROSTE, OF NEW YORK CITY, N. Y.

The CHAIRMAN. Mr. Droste, will you answer the question that has just been asked? Suppose that Congress, for some reason or other, can not see its way clear to pass this kind of a law—your business would not be changed at all, would it? You would continue to buy and sell just the same?

Mr. DROSTE. It would impose very great hardships upon many dealers in the product, beginning with the farmer. The sale of milk or cream to-day to the local creamery is practically a cash transaction, so far as the farmer is concerned.

The CHAIRMAN. He gets his pay once a month, does he not?

Mr. DROSTE. Oh, no. In nearly every instance it is cash on delivery of the cream now. It used to be once a month. Oh, yes; I know, because I am in the business. I am paying them all the time. Here and there, in certain localities, the system still prevails that they pay only twice per month. I know of none just once per month, unless it is in very isolated cases in Wisconsin, etc. There are very few in Minnesota. In the majority of cases the local station agent pays in cash for the cream that he buys from the farmer as the farmer brings it in. He does not even pay in an order on the store, as used to be done. He pays in cash.

The CHAIRMAN. Are these the creameries which you are interested in? The cooperative creameries only pay once a month, do they not?

Mr. DROSTE. Many of them pay twice a month now. I am speaking now of the larger concerns—the large creameries, that manufacture in one factory as much as a carload per day; another a carload per week, etc.

The CHAIRMAN. That is where cream is brought for long distances to a central point?

Mr. DROSTE. To a central point. The cream in that case is, in the majority of cases, paid for in cash.

Mr. DUNKAK. But the cooperative creamery is on the wane?

Mr. DROSTE. The cooperative creameries are beginning to pay every fifteen days now.

Mr. DUNKAK. But that system is on the wane?

Mr. DROSTE. Oh, yes; that system is being superseded. It is being forced out, because they can not produce the article as reasonable, as cheaply, as a larger creamery. Ultimately the working of that will

undoubtedly be that small centralizing plants will be organized in the various communities, and the farmers who now work it on a cooperative plan will become stockholders in that creamery, and then sell their cream. It must be done upon a commercial basis rather than upon the old-fashioned farm basis. It is drifting that way more and more.

The process of financing it is this: The farmer receives his cash immediately. The creamery produces this article. In the course of a week they get one carload of stock ready to go, for which they have already paid out their money. They take the bill of lading for that carload to the bank and draw upon us (the consignee of the goods) for practically the full value of that shipment—all they have paid for it, including their labor and including the cost of manufacture. They have not any capital beyond what is necessary to run for a short time. Unfortunatly, they never get rich at the business. They draw a sight draft upon us for that bill of lading. The banker, in virtue of the bill of lading which he has, is willing to advance that creamery (irrespective of their responsibility, if the bill of lading is a good bill of lading) the face of that draft upon us. We, on the other hand, when it reaches us, will pay the draft.

If that is not done, the bank there can only take that bill of lading on collection. It comes through to us; and when it is presented at our window two days after, through the mails, we can not afford to accept that bill of lading, because we do not know whether it is a good bill of lading or not. We must wait until the goods arrive. That takes seven days. After seven days the goods finally arrive. Then we cash it; word is sent back to Minnesota, and Mr. Man finally gets his money, after seven or eight or ten days. But in the meantime he has had to pay out constantly for the new product that he is getting.

This seven days' time illustrates what happens in our business. Take the lumber business, however——

The CHAIRMAN. Right on that point, before you close there. Your proposition is, then, that it would require a larger capital in the hands of the creameries at the manufacturing points in order to do the business?

Mr. DROSTE. Yes.

The CHAIRMAN. And that that would freeze out the little fellows from doing business?

Mr. DROSTE. Yes.

The CHAIRMAN. Let us make that clear—and that that would freeze out the little fellows?

Mr. DROSTE. It would freeze out every man that had not sufficient capital.

The CHAIRMAN. It would freeze out the little fellows, and concentrate the business in the hands of the men who had sufficient capital to swing the thing until the product got into your hands. Is that the proposition?

Mr. DROSTE. That is the idea exactly. It is to our interest as merchants to prevent that centralization, which would almost be placing the butter-producing business in the West in the hands of a trust as much as that is the case in anything else. There is nothing more desirable to us than a scattered manufacture, a diversity of manufacture, of butter, and a diversity of shipment of it.

The CHAIRMAN. You think, then, that protecting the bill of lading enables a reputable concern with a small capital to engage in business in small places?

Mr. DROSTE. Yes.

The CHAIRMAN. And develop the business there?

Mr. DROSTE. Yes.

The CHAIRMAN. A business which would not otherwise exist? That is your proposition?

Mr. DROSTE. Decidedly. A small dealer would be at a very great disadvantage in case of this bill of lading being distrusted. We have trusted it for years; but the frequency of its falsity of late is alarming us. Four or five or six or eight years ago we did not have these cases. They did not come up, because the volume of the business of the country was not so large. The volume in our product is increasing constantly, running into the hundreds of millions of dollars annually. It is not only butter, the particular line that I am interested in. It is eggs, of which the volume is, I think, far greater than butter; and it is poultry, which has an enormous volume. Altogether, all of these things are handled as cash items at the point of purchase.

The CHAIRMAN. You were addressing yourself to the subject of lumber. Just tell us about that now.

Mr. DROSTE. I know nothing about that, except as I was going to refer to the slow movement of freight of that nature. The lumberman who takes a receipt for a carload of mahogany, or whatever timber it is, goes to the bank and discounts that paper just the same. If there is no virtue in that paper, and he must wait until the goods arrive at the point of destination, he may have to wait two months. I am not sure, but I think it is the same with wheat and flour.

The CHAIRMAN. That would not make any difference at all in the lumber trade, would it?

Mr. DROSTE. It would unless the operators at home have a very large bag of money so that they can pay cash to whoever they buy this lumber from out West. That is another cash item; they pay cash to the small dealer that supplies the lumber to the large shipper.

The CHAIRMAN. You think it would work just the same in the lumber business?

Mr. DROSTE. I think it would without question, sir. It is the same way with the shipment of oranges from California, and I do not know what else.

The CHAIRMAN. That is in the hands of big concerns now.

Mr. DROSTE. This thing would be very apt to force things that way.

The CHAIRMAN. How about cotton?

Mr. DROSTE. Mr. Neville is the past grand master on cotton. I know nothing about cotton.

Mr. NEVILLE. Mr. Stevens, I can not conceive of anybody having enough capital to run a monopoly in cotton. But Mr. Mandelbaum is a man of riper experience than I am, and I see that he has been scribbling there, and I know that he has something to say.

STATEMENT OF MR. L. MANDELBAUM, OF NEW YORK CITY, N. Y.

The CHAIRMAN. Cotton is one of the very largest crops that has to be moved. What effect would such action as is proposed have on that? You would buy cotton just the same, would you not? What would be the effect upon dealers in cotton in the South?

Mr. MANDELBAUM. It would have a very disastrous effect upon them.

The CHAIRMAN. But cotton would be raised and bought and sold just the same; would it not?

Mr. MANDELBAUM. Cotton would be raised and bought and used just the same; but it would incur a great deal more expense than it does at the present time, which would have to come out of either the consumer or the producer.

The CHAIRMAN. In what way? How would that expense be incurred? Just tell us.

Mr. MANDELBAUM. If you will let me cover this matter in my own way, I think I can touch these questions as they came up here. I put them down as they came up; and if you will permit me to bring them up in that way, I think my statement will be more satisfactory.

In the first place, I do not desire to occupy your time any longer as to the bills of lading and the manner in which they have been gotten up, or are gotten up, in this country, except to say that as late as last week Hubbard Brothers & Co., of New York, received three bills of lading which purported to be signed by the same agent, and the signatures were in three different handwritings. There was no fraud connected with it. The cotton came forward. But the same thing happened on two bills of lading on the Atlantic Coast Line from Greenwood, S. C., and one bill of lading issued by the St. Louis and San Francisco Railway, where no station was mentioned at all, that the cotton was shipped from. It had to be sent back again, and afterwards the name of Albany was inserted. In my opinion, that is enough to show that there is no country on the face of the globe in which bills of lading are handled in such a slipshod and almost criminally negligent manner as they are in this country—not even in Mexico.

The CHAIRMAN. That is partly the fault of you gentlemen, is it not?

Mr. MANDELBAUM. It is partly our fault, and we intend to remedy it. I will come to that presently.

I hope you will take into consideration the fact that hundreds of millions of dollars are paid and have to be paid on the face of such documents. Our business affects the country vitally, more than the butter and egg business or the fruit business, as it is practically the only means which brings gold into this country, and which brings at certain times (and in fact at almost all times) large quantities of money which could, if necessary, be forced to be paid in gold, into this country. Now, everybody, as I understand it, to whom we have applied to remedy this serious state of affairs, doubted their power to remedy it. First, when we addressed the Interstate Commerce Commission, and at the last meeting of this honorable committee, they all doubted their power to legislate in the matter. Of course, it does not become me to refer to this matter, except that it looks strange to me that in a country that has the reputation of being the most practical country on the face of the globe there should not be one part of the Government that has power to remedy such a serious defect. Certain it is that something must be done. We were seriously considering this matter last year; and we only abstained from passing such a resolution as has been referred to because the country was in the throes of a most terrible panic, and we did not desire to aggravate

the situation still more than it was aggravated, particularly at a time when cotton bales were the only thing that could be depended on as the medium to bring gold into this country and thereby to stop the panic.

The CHAIRMAN. How about the wheat which came from our section of the country?

Mr. MANDELBAUM. It does not come in that volume at that time of the year.

The CHAIRMAN. There was a good deal of it.

Mr. NEVILLE. Mr. Stevens, my firm alone were carrying $40,000,000 worth of cotton in New York. We sold that cotton at a sacrifice to get gold.

Mr. MANDELBAUM. The cotton sold in the month of October last year was certainly over $75,000,000; and I do not think any other article could be mentioned that would come near approaching it.

Mr. NEVILLE. There were three of us last October and November who exported $40,000,000 worth of cotton. We used all the freight room we could get in New York.

The CHAIRMAN. Our wheat men claim that they saved the country, too.

Mr. NEVILLE. We are not making any claims for saving the country. I only mention that as an illustration.

Mr. MANDELBAUM. What do we ask? We ask nothing unfair. We simply ask that a law be provided that makes a railroad company liable for the signature of its bill of lading, for the signature of its duly authorized agent on a bill of lading, and a law that fixes the responsibility of the railroad until it delivers those goods to the consignee. I can not conceive how anybody could consider any of our demands as anything but fair; and I see absolutely no reason why they should not be granted.

Mr. Chairman, you have asked several times in what way the country would be affected if those bills of lading should not be honored—whether the cotton would not be forwarded or whether it would stop the growth of cotton. It would not stop the growth of cotton, but it would have made those bills of lading payable last year more than six weeks later; and it does not take much to estimate the situation that would have been caused in this country at that time. during that panic, if that had been the case.

The CHAIRMAN. If that was the case, then why should not that condition continue?

Mr. MANDELBAUM. Because panics will come occasionally as long as the world stands. They can not be prevented.

The CHAIRMAN. Yes; but if you stopped the panic then, or assisted in alleviating conditions without any law governing the bill of lading, why do you want that changed?

Mr. MANDELBAUM. Because we desire more security.

The CHAIRMAN. But you had all there was. You had the cotton.

Mr. MANDELBAUM. No; we did not. In some cases we got it, and in some we did not. We thought we had it; and we have been thinking for the last thirty years that we had a document that was worth something. We have come every year and every day more and more to the conclusion that we have nothing.

The CHAIRMAN. You have changed your business methods a good deal in the last few years—all of you gentlemen have. Could you not

change them still more, and wait for a little more definite information as to whether the goods have been actually shipped in accordance with the terms of the bill of lading before you pay for them?

Mr. MANDELBAUM. All the changes in business methods, Mr. Chairman, have been with a view to facilitating business, and not to making it more difficult. That would make it decidedly more difficult and more expensive. Men of affairs do not give their minds to making things more difficult; they try to make them as easy as possible and as cheap as possible.

The CHAIRMAN. But if you make it too easy and too cheap, you will encourage people to do wrong things.

Mr. MANDELBAUM. Not at all; that would not encourage them any more than they are encouraged at the present time.

The CHAIRMAN. Oh, yes, it would. If you permitted an irresponsible railroad agent to sign a bill of lading indicating that certain articles were received by him, that would fasten the responsibility on the railroad company.

Mr. MANDELBAUM. Yes, Mr. Chairman; but it must be one of two alternatives: One is, with the aid of Congress to facilitate the business and to keep it in the channel in which it has been moving until now. The other is to go to the other extreme, and absolutely refuse to pay any drafts until the cotton is delivered.

The CHAIRMAN. What harm would there be in doing the latter?

Mr. MANDELBAUM. The harm would be that in the first place it would be a great deal more expensive.

The CHAIRMAN. To whom?

Mr. MANDELBAUM. To the shipper.

The CHAIRMAN. That is, to yourself?

Mr. MANDELBAUM. No; we are not the shippers. We are the consignees. It would not do us harm; it would harm the shipper.

The CHAIRMAN. Who is the shipper?

Mr. MANDELBAUM. The shipper is the man who buys the cotton from the producer, in most cases.

Mr. NEVILLE. It is the producer in the last resort.

Mr. MANDELBAUM. Most of the business, even in the interior towns, is done on credit. The bank advances the money to the buyer to buy that cotton from the producer because it knows it can easily reimburse itself. It knows that when the buyer has gotten together 200 bales of cotton, if he ships that cotton out he will get a draft for five or ten thousand dollars, as the case may be. Without that assurance the bank certainly would not advance to that interior buyer. No bank would be willing to have money advanced when cotton is six weeks in transit, or, as it was two years ago, sometimes six months in transit.

The CHAIRMAN. What difference would it make in the buying of cotton, then? The only difference would be that you would extend your operations south, would you not?

Mr. MANDELBAUM. It would concentrate the business in the hands of a few very rich people, to the exclusion of most of the small people. It would be concentrated in the hands of those who, by reason of their great financial ability, could afford to maintain agencies at those places and buy directly themselves.

The CHAIRMAN. Then, they would ship it, too; and that would freeze out you people, or else you would have to go into business down there?

Mr. MANDELBAUM. It would not freeze us out. We are not interested in that part; but it would freeze out all the home buyers. While not exactly creating a trust, it would practically create a trust. It would put the entire business into the hands of a few rich people.

Mr. RUSSELL. Would it have the effect of keeping the local shipper out of the use of his money a longer length of time than at present?

Mr. MANDELBAUM. If it should be conducted the way that is suggested by the chairman?

Mr. RUSSELL. Yes.

Mr. MANDELBAUM. Most certainly it would keep him out of the use of his money for from six weeks to three months. Instead of handling a hundred or two hundred bales every two or three days, he could only handle two or three hundred bales in two months.

Mr. RUSSELL. You believe, then, that unless this legislation is enacted there is going to be such a change in the method of doing this business that the effect you suggest there will occur?

Mr. MANDELBAUM. There can be no question as to that.

The CHAIRMAN. Are you serious about that? Do you really contemplate changing your business to that extent?

Mr. MANDELBAUM. Certainly. We will have to do it, out of self-protection. I can cite you houses in New York that can not make out of cotton consignments in the next four years what they have lost during the last year. There are a great many houses to-day that will not receive any consignments——

Mr. RUSSELL. You say that this method will be put in vogue unless something of this sort is done—that they will not pay the draft until after the cotton is actually delivered?

Mr. MANDELBAUM. Certainly; certainly.

The CHAIRMAN. You know, do you not, that if any one or two concerns of any considerable size should make advances, the rest of you would have to do so?

Mr. MANDELBAUM. But in the case of those concerns of considerable size and financial ability such as you name, it would be for their interest not to do it, because it would be money in their pockets. They could practically monopolize the business.

Mr. RUSSELL. Mr. Mandelbaum, would not the trust between business men in each other's business integrity keep the matter going along as it is now?

Mr. MANDELBAUM. It would not—most decidedly not; not in our business. If you take into consideration, gentlemen, the fact that five thousand dollars is about the smallest amount of these drafts—in fact, the drafts range from five to fifty and sometimes a hundred thousand dollars—you can easily appreciate that the advances are made on documents.

Mr. RUSSELL. Yes; but a great deal, or the majority, of the business of the country is done upon the faith that men have in the integrity of the men they deal with; is it not?

Mr. MANDELBAUM. That is an entirely different thing. You refer to commercial business that is done on credit, and not to a business that absolutely could not be done on credit. The volume of business in three or four months is entirely too large for any one man or any set of men to do on credit.

Mr. NEVILLE. Mr. Russell, you know how the cotton moves in your town in the active season.

Mr. RUSSELL. Yes.

Mr. NEVILLE. Suppose a buyer of cotton on the streets could not take that bill of lading and attach it to a draft and draw on, say, Mr. A in Houston or Galveston?

Mr. RUSSELL. It would be a great inconvenience.

Mr. NEVILLE. How long could the bank do the cotton business of that town?

Mr. RUSSELL. It would be a great inconvenience, and I do not know what method the bank would pursue.

Mr. NEVILLE. Mr. Russell, I do not suppose there is a town in Texas that amounts to anything at all that is near a railroad that I have not been in between the time I first went there and 1903, when I left, and until this Belton matter, in 1906, I believe that every bill of lading that came into my office was a bankable document. And when my attorneys in New York told me that it was not, I told one of them: "You don't know what you are talking about. You may be all right for New York law, but I don't think you know anything about their law." But when I went down there, and J. C. Hutchinson told me that it was not worth anything, I said: "That being the case, I want to get out of the cotton export business, and I want to confine my attention to the farm." I have a farm down there.

The CHAIRMAN. Mr. Neville, I will ask you the same question that I asked Mr. Mandelbaum: Suppose that one or two large concerns did see fit to continue to conduct business in the same way that you are doing it now—would not that compel the rest of you to do it in order to do the business?

Mr. NEVILLE. Is that any extenuating circumstance for failure to correct an abuse that exists, Mr. Stevens? Just come right down and look at the matter in a plain business light. Do not let us try to beg any question that comes up. Here is an evil. These gentlemen have not told you of a bunch of losses that happened to them on eggs from Nashville—why, I do not know. Here is an evil that comes up, and as I stated before, when a loss comes, it comes to an individual, it is not distributed.

The CHAIRMAN. But you are making an argument to us to the effect that the whole business of the community will be turned topsy-turvy, and the course of business will be changed and the little fellows will be frozen out, and all that; and when you come to analyze it right down, the course of business will not be changed very much.

Mr. NEVILLE. Mr. Stevens, if I had the vocal power to demonstrate it to you, I would make you a prediction that the monopoly of the Standard Oil business will be nothing compared with the combined monopolies that will arise unless something is done.

STATEMENT OF MR. LEWIS E. PIERSON,

Of the Irving National Bank, New York City, N. Y.

Mr. PIERSON. Mr. Stevens, I did not intend to say anything on this matter, but I have been very much interested in it as the chairman of the American Bankers' Association bill of lading committee. I think you gentlemen will all agree that the banker's interest in the matter is secondary, not primary; because the man that he trusts on

any bill of lading has to be entirely wiped out before the loss can reach him.

You have asked some questions here that some of these gentlemen have explained, but perhaps not as fully as you desire. Take the shipment of cotton, to which you have alluded: The draft is drawn, the bills of lading are attached, a draft is brought to a Texas bank, and the money is immediately advanced. That money is again taken by the shipper. He creates another shipment the very next day. He gets the money that day. The same money is turned over time and time again. Now, that does not apply only on cotton. It applies on wheat; it applies on butter and eggs; it applies on lumber; it applies on every product that goes into consumption and comes from the farm; and that means $17,000,000,000 last year.

You have asked the question as to what would happen if all the business interests and the banks should make up their minds that this was a very hazardous business, and should determine not to continue it any longer. You can not begin to imagine the panic and the losses that would be entailed. Just take cotton alone: I do not mean to say it is going to be done, but I will say that it has been discussed, and it has been seriously discussed by some of the exchanges, particularly in New York City. I am no prophet; but I would not be surprised in case no concerted action is taken, if house after house should restrict its business in that line. But you want to follow the thought to its conclusion as to what would happen unless this document is in some way protected—take cotton alone: If it could not be shipped, if it could not be financed, what would the price drop to? It would go out of sight. It would practically drop down to nothing unless it could get to market; and unless it was facilitated to market through the present method of handling, there would not be the money there that could carry it. The shippers could get a certain amount of credit, but that would be a limited amount. The document itself has been used as collateral; and it has been not alone by the banks, but by these gentlemen who pay the draft. They take those documents and get their money from abroad.

The CHAIRMAN. Let me ask a question right there: Then the converse would be true—that if this additional security is furnished by a proper act of Congress, and additional facilities are provided for moving these crops, it would create an additional value in the hands of the producer?

Mr. PIERSON. Absolutely.

The CHAIRMAN. Do you think that is true?

Mr. PIERSON. If anything is done to facilitate business throughout this country, to make it easier and to bring the money more quickly to the producer, it brings him a better price. It makes business safer and surer—absolutely. I do not think you gentlemen really appreciate the full importance of this question. You have not been in it as we have. But I tell you that there is no question before the Congress to-day, except possibly the monetary question, that is more vital to the business of this country than this bill of lading question. Every article that is shipped is represented by a bill of lading; and yet you have not given us any laws defining what that document is, or protecting anybody that handles it. We have to do something. We can not go on in this chaotic condition any longer. It is not right; it is not businesslike. Here is a great, big nation growing so

that it has outstripped every other nation; and we have to be protected. The trouble here has been that we have grown too fast, and these vital things have been overlooked. It is just as it was years ago in the case of promissory notes, away back in the time of the Law of Anne. You gentlemen may have read about the fact that there was a chaotic condition there that had to be taken up. They were not in negotiable form until Parliament had to take the matter up and legislate on it; and then what was the effect? Promissory notes to-day create money all over this country and every other civilized country, because those laws have been passed. I am not arguing on that as something that we may ask you to do in this bill, because it has already been stated that we are willing to leave that question to the future to take care of itself, if you will simply put us in a position of being able to say to the railroads: "You have signed for some goods. Where are those goods? And if they are not there, pay us the money for them." That is all we ask.

Mr. LOVERING. What is the character of the bill of lading in Europe as a negotiable document?

Mr. PIERSON. I know that the Liverpool Cotton Exchange has been very much interested in the measure here. I have not studied conditions abroad in this respect, however.

Mr. NEVILLE. That does not answer Mr. Lovering's question.

Mr. PIERSON. I can not answer that question; I have not been abroad.

Mr. WILLISTON. The bill of lading is given full negotiability by the last German code.

The CHAIRMAN. To the limit you asked in the Maynard bill?

Mr. WILLISTON. To the full limit.

Mr. LOVERING. That makes the transporting agent responsible?

Mr. WILLISTON. Yes.

Mr. MANDELBAUM. Why, gentlemen, it is so in Mexico. (Laughter.) That is an uncivilized country; and you do not need to go any farther.

The CHAIRMAN. What about England?

Mr. NEVILLE. The English law is the same as a grain receipt used to be in this country.

Mr. WILLISTON. There is a bill of lading act in England, but it does not go so far as the German law. It does give some measure of negotiability to the document beyond the common law.

The CHAIRMAN. What about the responsibility for goods not delivered?

Mr. NEVILLE. It is a penitentiary offense for the agent to sign for goods without receiving them.

The CHAIRMAN. But what about the financial obligation of the carrier?

Mr. MANDELBAUM. The carrier has to pay.

Mr. WILLISTON. No; that is not so, Mr. Chairman, I am obliged to say.

Mr. MANDELBAUM. They do not have to pay?

Mr. WILLISTON. No; they do not have to pay—not if they sign without authority.

(A gentleman present suggested that the English law was the one under discussion.)

Mr. MANDELBAUM. I thought you spoke of Germany.

Mr. WILLISTON. No; the question was as to England.

Mr. PIERSON. This has all been a development. This method of financing the crop and paying the drafts by the merchants and handling the bills of lading for credit by the banks has all been a development of the last few years; and the confidence they have had in it has probably been due to the confidence they have had in ocean bills of lading, which have been in effect for the same purpose for centuries.

Mr. LOVERING. Can some one answer this question for me: Why is it that the railroads do discriminate? Why is it that if I buy 500 bales of cotton, and it falls a dozen bales short in delivery, the railroad will assume that responsibility—they will find those twelve bales of cotton for me, or they will pay me for them?

Mr. WILLISTON. I suppose it may be due to this: That if the railroad received originally the full number, it would be liable even if all had disappeared; and where part have disappeared, it assumes that it has received them all, and that some have gotten lost out after it has received them. But where there are none——

Mr. LOVERING. Who shall say where that shall end?

Mr. WILLISTON. Of course if the railroad receives the full number of bales and loses them, then it is liable. The case that we are trying to legislate for——

Mr. LOVERING. Suppose they say they did not receive them? Suppose that out of five hundred bales there were ten or a dozen bales short, and they did not receive them?

Mr WILLISTON. If they could prove that, then they would escape.

Mr. LOVERING. But they never try to escape. They acknowledge the obligation. Is not that so, Mr. Neville?

Mr. NEVILLE. They pay it after a while.

Mr. LOVERING. They will either find you that cotton, or they will pay you for it.

Mr. WILLISTON. If they actually discovered that the shipment was originally short, how would it be?

Mr. LOVERING. I do not know anything about that. That does not come to me at all.

Mr. WILLISTON. I think it might be queried, if they found that the shipment was originally a short shipment, whether they would do that.

Mr. DROSTE. I will say that they always do pay short claims. I have never had a short claim disputed. They might find, when they got back to the point of shipment, that they never received the goods.

Mr. LOVERING. Why is there not just as much justification for a railroad to deny the responsibility for the entire shipment as for a portion?

Mr. DROSTE. It is purely a question of policy and amount.

Mr. PIERSON. I will tell you why it is. There are so many of those small ones that they would make such a big "holler" that the legislation would be enacted very quickly. That is my judgment on it. How many of those cases would you have in your exchange in a week, for instance?

Mr. DROSTE. Why, hundreds of them.

Mr. LOVERING. They always pay.

Mr. DROSTE. Always. I have never had a case when they have refused to pay. But when it comes to a large item like this, they

refuse to pay it; and the evil of this is the constantly growing custom of their indulging in this practice for their own benefit through increasing their traffic.

The CHAIRMAN. Now, gentlemen, after we get through with the general argument for the policy to be adopted, we want to discuss briefly the nature of the remedy. We have been rather frank about this; possibly a little brutal, sometimes.

Mr. PIERSON. That is so.

The CHAIRMAN. But after you gentlemen have all said all that you want to say about the necessity for the legislation, we would like to discuss, as Mr. Russell has just suggested, the form of it, and the changes from the Maynard bill. Have you anything further to urge as to why legislation should be passed?

Mr. WILLISTON. I should like to say a single word in regard to the point you raised as to the probability of fraud being caused in this way.

The CHAIRMAN. Yes.

Mr. WILLISTON. It has been a somewhat disputed common-law question whether the carrier was not liable without legislation. As one of the speakers has said, in New York, for instance, it is the common-law rule that a carrier is liable as we wish to have him made liable by legislation. No noticeable fraudulent effect seems observable in New York, for instance, where that is the law. On the contrary, these difficulties which have been presented to the committee have rather originated in other States where the contrary rule of law prevails. So I think it may fairly be assumed that if the statute law were changed so that the law all over the country was the same as that which is now the common law of New York, no worse results as to fraud need be anticipated than are now apparent there.

Mr. NEVILLE. I should like to say, Mr. Stevens (following Professor Williston), that in the three Southern States that I am familiar with and do business with (Alabama, Louisiana, and Arkansas), there has not been a single case of a fraudulent bill of lading, or a bill of lading signed without the receipt of the goods, that has come to my notice since they passed these laws.

Mr. WILLISTON. In those three States I understand there is a law rendering the carrier liable?

Mr. NEVILLE. Yes, sir; in Louisiana the fine is $5,000 and a penitentiary sentence of five years.

Mr. PIERSON. Mr. Paton, I think, has there the Maynard bill. Suppose you let him take that and say what he has put into it, or something of that sort, Mr. Chairman.

STATEMENT OF MR. THOMAS B. PATON, OF NEW YORK CITY, N. Y.,

General counsel of the American Bankers' Association.

Mr. PATON. Mr. Chairman, I have taken the liberty to draft an amended bill following out the line of thought which has been presented here to-day. This bill provides, in brief, the definition of an order bill of lading, and contains three requirements, following out the suggestions of the Interstate Commerce Commission.

The first requirement is that the words "order of" shall be prominently entered.

The second requirement is that the bill shall be printed on yellow paper 8½ inches wide and 11 inches long.

The third requirement is that it shall contain on its face the following provision:

The surrender of this original order bill of lading, properly indorsed, shall be required before delivery of the property.

The fourth requirement is that it shall not contain the words "not negotiable," or words of similar import. If such words are placed in an order bill of lading, they shall be void and of no effect.

Then a provision that "nothing herein contained shall be construed to prohibit the insertion in an order bill of lading of other terms or conditions not inconsistent with the provisions of this act." That defines an order bill of lading, and enacts into law those vital requirements of the Interstate Commerce Commission.

The CHAIRMAN. And it is not wise to define a state bill of lading at all in any act?

Mr. PATON. Then I attempt also to define a state bill of lading:

Whenever a bill of lading is issued by a carrier for the transportation of property from a point in one State to a point in another State, or from a point in the United States to any foreign country, in which the property described therein is stated to be consigned or deliverable to a specified person, without any statement or representation that such property is consigned or deliverable to the order of any person, such bill shall be known as a "straight bill of lading," and shall contain the following requirements:

"The bill shall be printed on white paper, 8½ inches wide by 11 inches long.

"The bill shall have prominently stamped upon its face the words 'not negotiable.'

"Nothing herein contained shall be construed to prohibit the insertion in a straight bill of lading of other terms or conditions not inconsistent with the provisions of this act."

The Interstate Commerce Commission having prescribed two forms of bill—one the straight one and the other the order bill of lading—this act seeks to carry out their recommendations and prescriptions so far as it is practicable to do so.

Following that, I make a provision which makes it a criminal offense for anyone in issuing such a bill to violate those requirements as to form.

The succeeding sections of the act make it unlawful to issue an order bill or a straight bill until the whole of the goods have been received. They make it unlawful to issue a second or duplicate bill while the original is outstanding uncanceled without marking such second bill "Duplicate." And they make it unlawful to deliver the goods on an order bill without taking up and canceling that bill, or stamping thereon, in case of partial delivery, a memorandum of the goods delivered; or, in lieu thereof, in certain cases where it is impracticable to present the bill immediately, allowing the carrier to take a bond.

It covers those three requirements—makes it unlawful to issue false bills, makes it unlawful to issue unmarked duplicates, forbids delivery without requiring the surrender of order bills, provides for the taking of a bond, and provides a criminal penalty in each of such cases and a civil liability to the party aggrieved.

Those, in brief, are the provisions of this bill.

The CHAIRMAN. The conditions the Interstate Commerce Commission have placed on the back of those other bills are, in substance, those that you have there; are they?

Mr. PATON. Partially.

The CHAIRMAN. Where is the difference?

Mr. PATON. The difference is this: The order provision is the same. The clause requiring surrender of the property prescribed by the Interstate Commerce Commission is followed by a provision as to inspection. I do not feel satisfied that it would be wise to enact into law that inspection clause—"Inspection of the property will not be permitted unless indorsed hereon in writing by the shipper." There might be cases where such a law would work a hardship. I thought it might be unwise. The Interstate Commerce Commission further recommended that the bill should be signed, not only by the agent of the carrier, but by the shipper. I hesitated about putting that requirement in. And, of course, the prescribed conditions on the back of the bill are all omitted. This simply deals with the face. The Interstate Commerce Commission, of course, prescribe that the order bill should have "order of" printed on it, and that the straight bill should have "not negotiable" printed on it. Those are in here.

I think the omission of the inspection clause, and the omission of the requirement of signature by the shipper, are about the only things on the face of the bill recommended by the Interstate Commerce Commission that are not prescribed here.

The CHAIRMAN. On the back, as I noticed, there were eighteen or twenty conditions of one kind and another.

Mr. PATON. I believe ten conditions.

The CHAIRMAN. Ten conditions. Wherein do those conditions make a difference in the obligation of the carrier or the obligation of the shipper as contrasted with what you have placed here?

Mr. PATON. Those conditions do not relate to what is placed here. Those conditions are the contract of the carrier as to liability for the goods in case of loss or not delivering them. One condition other than that is a condition as to the legal effect of the bill where it is altered.

The CHAIRMAN. You want that in this bill, do you not?

Mr. PATON. Well, I hesitated about putting that in. It might go in. But the thought was this: If you put in one condition from the back, why should you not enact them all? So I did not attempt to put into an enactment any of the conditions on the back. The contract itself provided in those conditions, if it is accepted, that the altered bill would be good for its original tenor.

Mr. NEVILLE. Those conditions on the back of the bills of lading as promulgated by the Interstate Commerce Commission are nothing that could be enacted into law, as they are only the points of a contract between the shipper and the railroad.

Mr. PATON. Between the shipper and the railroad and the assignee of the shipper.

The CHAIRMAN. Well, there are some things that could be like the effect of an altered bill of lading.

Mr. NEVILLE. Yes.

The CHAIRMAN. Of course I have only read over hastily the report of the Interstate Commerce Commission; but it occurred to me that there was some sort of a provision there about the obligation of the carrier, or the effect of surrendering goods without surrendering the bill.

Mr. PATON. That is on the face of the bill. I have a copy here of the bills as prescribed—both the straight and the order bill. Here is the uniform form, as prescribed by the commission, of the order bill. The only difference between this and the straight bill lies in this black print here: "The surrender of this original order bill of lading, properly indorsed, shall be required before the delivery of the property." "Inspection of property covered by this bill of lading will not be permitted unless provided by law, or unless permission is indorsed on this original bill of lading or given in writing by the shipper." Then the printing of "order of," or "consigned to order of." Comparing that with the straight bill of lading, you will note the difference in the title, "Order bill of lading, original"—"straight bill of lading, original, not negotiable;" the same form of receipt, but the omission of this surrender and inspection clause, and the omission of "order." Otherwise, you will see, it is exactly the same.

The CHAIRMAN. The point I had in mind was section 10. Oh, I see!

Mr. PATON. That is the alteration clause.

The CHAIRMAN. Then you have none of these conditions?

Mr. PATON. I have none of these in this proposed draft. I first intended to put in the alteration clause; and then I thought there would be no reason for making a distinction. It might be criticised if I made the distinction, and took one provision out of the back and left the others. Of course it is more beneficial to the negotiability of the bill to have that alteration clause, as a matter of law.

Mr. DROSTE. What is that alteration clause?

Mr. PATON. It is a clause which provides that in case the bill is materially altered without the notation in writing of the carrier, it shall be good, valid, and enforceable for its original tenor. In other words, if the bill is raised from five cases of eggs to fifty, it is good for the five cases.

The CHAIRMAN. You have that form, have you?

Mr. PATON. I have it, marked "tentative draft."

The CHAIRMAN. I think that had better go into the hearings, to be printed as a part of your statement.

(The draft prepared by Mr. Paton, as above stated, is as follows:)

TENTATIVE DRAFT.

ORDER BILL OF LADING DEFINED.

SECTION 1. That whenever any common carrier, railroad, or transportation company (hereinafter termed carrier) shall issue a bill of lading for the transportation of property from a point in one State to a point in another State (the word State to include territory and the District of Columbia) or from a point in the United States to any foreign country, which bill shall be, or purport to be, drawn to the order of the shipper or other specified person, or which shall contain any statement or representation that the property described therein is, or may be, deliverable upon the order of any person therein mentioned, such bill shall be known as an "Order bill of lading" and shall conform to the folowing requirements:

(a) In connection with the name of the person to whose order the property is deliverable the words "Order of" shall prominently appear in print on the face of the bill, thus: "Consigned to order of ———."

(b) The bill shall be printed on yellow paper, 8½ inches wide by 11 inches long.

(*c*) It shall contain on its face the following provision: "The surrender of this original order bill of lading properly indorsed shall be required before delivery of the property."

(*d*) It shall not contain the words "Not negotiable" or words of similar import. If such words are placed on an order bill of lading they shall be void and of no effect.

(*e*) Nothing herein shall be construed to prohibit the insertion in an order bill of lading of other terms or conditions not inconsistent with the provisions of this act.

STRAIGHT BILL OF LADING DEFINED.

SEC. 2. Whenever a bill of lading is issued by a carrier for the transportation of property from a point in one State to a point in another State, or from a point in the United States to any foreign country, in which the property described therein is stated to be consigned or deliverable to a specified person, without any statement or representation that such property is consigned or deliverable to the order of any person, such bill shall be known as a "Straight bill of lading" and shall contain the following requirements:

(*a*) The bill shall be printed on white paper, 8½ inches wide by 11 inches long.

(*b*) The bill shall have prominently stamped upon its face the words "Not negotiable."

(*c*) Nothing herein shall be construed to prohibit the insertion in a straight bill of lading of other terms or conditions not inconsistent with the provisions of this act.

SEC. 3. Every carrier, or officer, agent, or servant of a carrier, who shall knowingly violate any of the requirements stated in subdivisions (*a*), (*b*), (*c*), or (*d*) of section 1 and in subdivisions (*a*) or (*b*) of section 2 shall be guilty of a misdemeanor and punishable by fine of not more than $1,000 or imprisonment not more than one year, or both.

SEC. 4. It shall be unlawful for any carrier, or for any officer, agent, or servant of a carrier, to issue an order bill of lading or a straight bill of lading, as defined by this act, until the whole of the property as described therein shall have been actually received and is at the time under the actual control of such carrier, to be transported; or to issue a second or duplicate order bill of lading or straight bill of lading for the same property, in whole or in part, for which a former bill of lading has been issued and remains outstanding and uncanceled, without prominently marking across the face of the same the word "Duplicate."

SEC. 5. Every carrier, or officer, agent, or servant of a carrier who knowingly violates the provisions of section 4 of this act and every person who negotiates or transfers for value a bill of lading known by him to have been issued in violation of said section 4, shall be guilty of a misdemeanor and upon conviction shall be punished by fine not exceeding $5,000 or imprisonment not exceeding five years, or both.

And every carrier who himself, or by his officer, agent, or servant authorized to issue bills of lading, issues a false or duplicate bill of lading in violation of the provisions of section 4, shall be estopped, as against all and every person or persons injured thereby who shall acquire any such false or duplicate bill of lading in good faith and for value, to deny the receipt of the property as described therein, or to assert that a former bill of lading has been issued and remains outstanding and uncanceled for the same property, as the case may be; and such issuing carrier shall be liable to any and every such person for all damages, immediate or consequential, which he or they may have sustained because of reliance upon such bill, whether the person or persons guilty of issuing or negotiating such bill shall have been convicted under this section or not.

SEC. 6. It shall be unlawful for any carrier, or officer, agent, or servant of a carrier, to deliver the property described in an order bill of lading without requiring surrender and making cancellation of such bill, or in case of partial delivery, indorsing thereon a statement of the property delivered: *Provided*, That in lieu of such delivery, it shall be lawful for the carrier, or his officer, agent, or servant in his behalf, to take from the person to whom such property is delivered a good, sufficient, and valid bond in a sum double the value of the property, conditioned that such person shall, within a reasonable time thereafter, deliver to the carrier the original order bill of lading issued for said property or shall pay the value of said property to the carrier upon demand; and upon the execution and delivery of said bond aforesaid, it shall be lawful for the carrier, or his officer, agent, or servant, to deliver the goods

to the person claiming title thereto, without requiring the immediate surrender of said order bill of lading. Every carrier, or officer, agent, or servant of a carrier, who knowingly violates the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding five thousand dollars, or imprisonment not exceeding five years, or both.

And every carrier who by himself, or by officer, agent, or servant authorized to deliver goods upon surrender of an order bill of lading, violates the provisions of this section shall be estopped as against all and every person or persons injured thereby who shall acquire any such order bill of lading, from asserting that the property as described therein, has been delivered; and such delivering carrier shall be liable to any and every such person for all damages, immediate or consequential, which he or they may have sustained because of reliance upon such bill, whether the person or persons violating this section have been convicted or such violation or not.

SEC. 7. Any material alteration, addition, or erasure in or to an order bill of lading or a straight bill of lading, fraudulent or otherwise, shall be without effect, and in the hands of a bona fide holder for value not a party to the alteration thereof, such bill shall be valid and may be enforced according to its original tenor: *Provided, however*, That an alteration, addition, or erasure in or to any such bill of lading with signature thereto indorsed thereon, by the issuing carrier, or his officer, agent, or servant in his behalf and with the consent of the holder thereof, shall be valid and effective.

Mr. PIERSON. Mr. Chairman, Mr. Paton has tried to make that just as simple and concise as he possibly could, and to give us what we are trying to get without any frills on it.

The CHAIRMAN. If you are to have any legislation at all it will have to be in just such form.

Mr. PIERSON. Every effort has been made to boil it down as far as possible.

Mr. DROSTE. Mr. Stevens, going back to your thought about this proposed legislation increasing the chances of people doing criminal acts and leading them on to do criminal acts, it seems to us it will entirely lessen any such tendency, because the railroad itself will then issue instructions to its agents not to do this thing. To-day they are simply quietly winking at it and letting it go on in that way.

Mr. NEVILLE. If the issuance of a bill of lading without the receipt of the goods is punishable by imprisonment and a fine, who under the sun is going to sign a bill of lading like that?

Mr. DROSTE. They are not likely to sign it.

Mr. NEVILLE. It does not happen in Louisiana, Alabama, or Arkansas.

The CHAIRMAN. One thing I wish to know is this: Is there contained in any of the documents which you gentlemen have furnished us an abstract of the laws of Great Britain, Germany, France, or Holland relative to these very things?

Mr. NEVILLE. No, sir; I think not.

Mr. WILLISTON. No, sir; there is nothing of that kind before you.

The CHAIRMAN. Could you furnish us such an abstract within a few days?

Mr. WILLISTON. Yes; I could, within a short time.

The CHAIRMAN. Time is pressing, if you want us to act on this matter. Of course we could get it over here at the Congressional Library.

Mr. WILLISTON. I can do it in a very few days after I get home.

Mr. PIERSON. You say Germany is——

Mr. WILLISTON. In Germany I know what the situation is.

The CHAIRMAN. That is what we want to know.

Mr. PIERSON. We have had prepared a digest of the various old state laws. Of course there is a conglomeration of every imaginable kind; but we have had that prepared.

The CHAIRMAN. Where is that?

Mr. PIERSON. Mr. Paton, I do not know whether you brought that with you or not.

The CHAIRMAN. That is important.

Mr. PATON. I have a partial digest with me, taking from the state laws the provisions which cover the points covered by this proposed act—that is, what States punish criminally the issue of a false bill, what States punish civilly the issue of a false bill, or of a duplicate, etc.

Mr. LOVERING. What State, in your judgment, furnishes the best remedy?

Mr. PATON. I think I like the Louisiana and the Arkansas laws about as well as any. I think they cover the ground completely.

Mr. RUSSELL. Will you file the statement that you refer to?

Mr. PATON. I can file it within a few days. It is the original copy, made very hurriedly at the last moment from a compilation of the laws just completed. I can send down a copy of it within a few days.

The CHAIRMAN. I think it would be wise to send as much as you possibly can as quickly as you can.

Mr. PATON. Yes, sir.

The CHAIRMAN. Because this subcommittee will act quite soon.

Mr. PATON. Yes, sir.

Mr. LOVERING. Did I understand you to say that New York had the best law?

Mr. NEVILLE. I like the Louisiana law best, as a merchant. I am no lawyer; but as a merchant that appeals to me.

Mr. DROSTE. I understand that the New York law is very effective; is it not? Has not the New York law proven very effective, too?

Mr. NEVILLE. Yes.

Mr. PIERSON. Mr. Chairman, just a word, before you close. This is really a matter that affects every person doing business in the United States, and every shipper abroad. You have no idea of the thousands and hundreds of thousands of people who are vitally interested in this legislation.

Mr. LOVERING. Do you think it affects the first man or the last man?

Mr. PIERSON. It affects them both. It affects them all along the line.

Mr. NEVILLE. I am a little bit more explicit in my opinion than Mr. Pierson is. Any man that raises anything to sell is the man that is first affected.

Mr. LOVERING. And most affected?

Mr. NEVILLE. Yes; and most affected.

Mr. PIERSON. Yes; that is very true. All of these farmers will have that produce thrown on their hands, and it will rot because the money can not be produced quickly enough—real cash can not be produced quickly enough to move the produce.

The CHAIRMAN. How long does it take, for example, to move the cotton crop—the bulk of it—through the whole year?

Mr. MANDELBAUM. About seven or eight months.

Mr. NEVILLE. Sixty per cent of it is moved by the 1st of January—from the 1st of September to the 1st of January.

The CHAIRMAN. How long does it take to move the wheat crop—I mean, the bulk of it?

Mr. PIERSON. I should think about the same period; six months, probably.

The CHAIRMAN. Less than that, I think.

Mr. NEVILLE. There is only one thing where the production is something like uniform, and that is the case of the hen laying eggs.

The CHAIRMAN. That is Mr. Droste's business.

Mr. DROSTE. That is a business that produces for fifty-two weeks in the year. Every week of the year the production is going on, and the traffic is going on, and the consumption is going on. It does not go into foreign traffic, but it is constantly revolving consumption and production.

The CHAIRMAN. Do you think, seriously, that it would make much of any difference with the prices to the producer or the consumer if we did not pass this legislation? Do you gentlemen think so?

Mr. MANDELBAUM. Decidedly.

Mr. PIERSON. Most decidedly.

Mr. DROSTE. We are coming to a point where it is extremely dangerous for us to deal in these bills of lading. My own personal experience within two years is that $6,700 has been drawn upon me for bills of lading that there were no goods back of.

The CHAIRMAN. But would not the effect be this: That the prices to the producer and the consumer would not be changed, but that large concerns would procure ample capital and operate in place of the smaller ones?

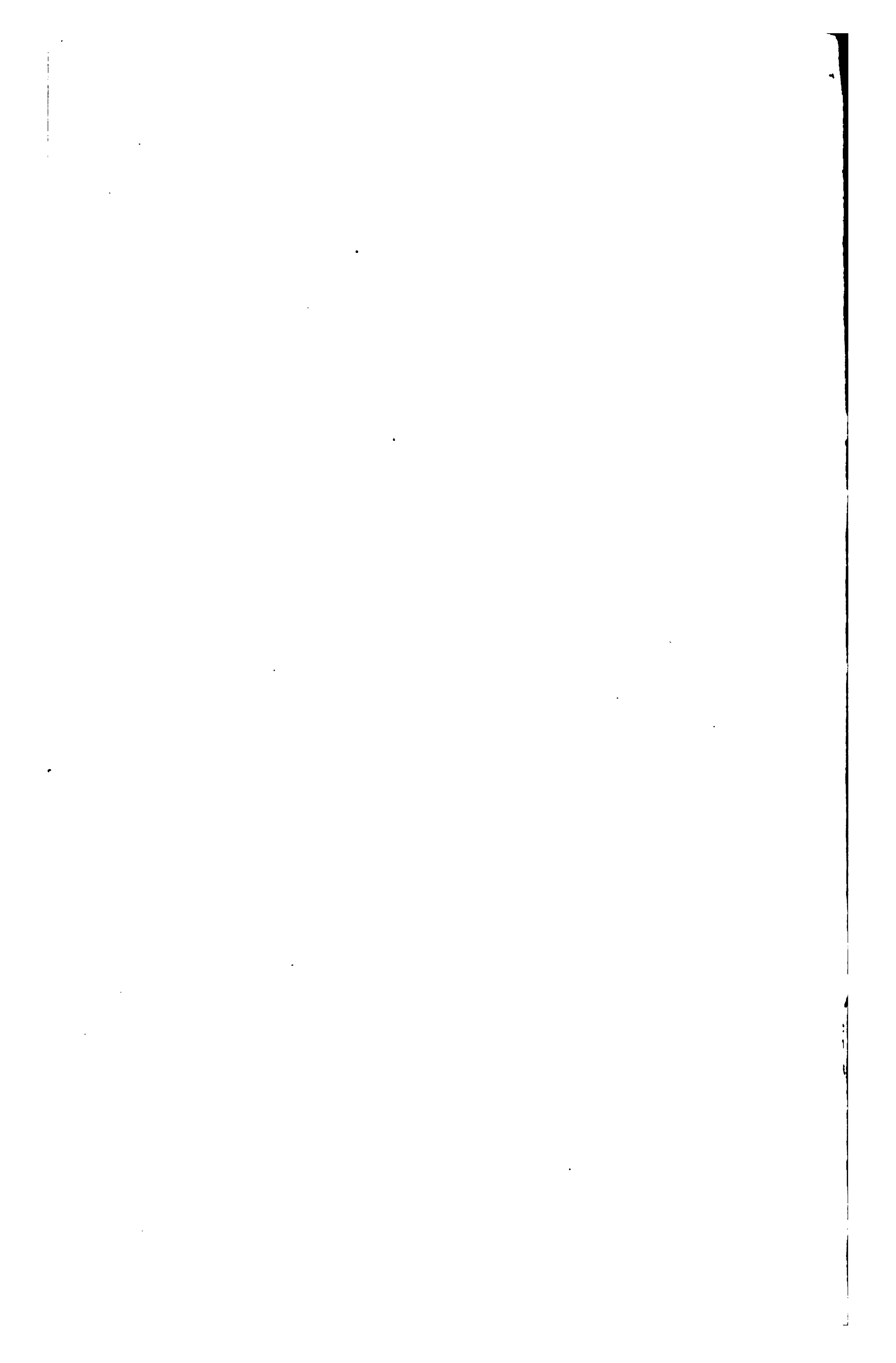
Mr. DROSTE. The large concerns would gradually absorb all the small ones in the country districts. That is, Armour and Swift and that class of people would put up their plants there and absorb that business, because the smaller man has not the means with which to continue the business.

The CHAIRMAN. Then, if that be true, do you think that would make any difference by diminishing the number of purchasers and handlers? Do you think that that would make a difference?

Mr. DROSTE. Why, yes; there is general competition for those products among all of us now. If you lessen that competition to a half dozen, I should like to be one of the half dozen.

Mr. MANDELBAUM. If I and Mr. Neville alone are to buy cotton, I believe we can come together and say that instead of bidding against each other, we will buy that cotton together. If there are 50 people there, you can not do it.

(The subcommittee thereupon adjourned.)



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HEARINGS

BEFORE THE

U.S.
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

ON

UNIFORM BILLS OF LADING

[v. 3,] No. 2

WASHINGTON
GOVERNMENT PRINTING OFFICE
1909

HE2242
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1908
v.4

UNIFORM BILLS OF LADING.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Wednesday, January 27, 1909.

The subcommittee met at 2 o'clock p. m., Hon. Frederick C. Stevens (chairman) presiding.

Mr. STEVENS. Gentlemen, the subcommittee has met to consider the objections to the committee print on the part of the railroad companies. The hearings that we had early this session from the proponents of this measure, from shippers and banking interests, have been printed, and I imagine most of you gentlemen are acquainted with the arguments and reasons brought forward for a favorable report upon the committee print which you have before you. We would like now to hear from the gentlemen who oppose the enactment of this committee print, and Senator Faulkner wrote me and Mr. Buckland wrote me, and if they will produce whatever arguments they have at this time, we would be greatly obliged to them.

Mr. FAULKNER. Mr. Chairman, I did not myself intend to discuss this question before the subcommittee for the reason that a gentleman who I thought was far more capable, and thoroughly familiar with the bill that it is proposed to be suggested to the full committee, and also with the history of this matter in connection with commercial bodies and the Interstate Commerce Commission. He was to have been here this morning to make the objections that should be suggested. I refer to Mr. George F. Brownell, vice-president and general solicitor of the Erie, who has had this whole matter in charge for the railroads, as the chairman of the committee of the carriers, and who conferred with the Interstate Commerce Commission and with the shippers, representing all parties interested in the official territory, especially shippers, and who have agreed to a bill of lading which has been promulgated by and with the approval of the commission. He has not arrived. I have not heard the reason why he has not reached here. He is certainly the most competent person I know of to present the views opposed to this measure, and for that reason I would like an opportunity to have him here.

Mr. STEVENS. We certainly want to have the benefit of any information we can get on this important matter, and if any of the other gentlemen here have anything to suggest, we will hear from them now.

Mr. FAULKNER. You will appreciate, Mr. Chairman, that Mr. Brownell is thoroughly competent to discuss this question, really more so than any one else I know of representing the railroads.

Mr. STEVENS. He is the man we want to hear from, then. Are there any others present who would like to be heard?

Mr. PAULDING. I would say, representing the New York Central line, that I did not know of this hearing until yesterday. Mr. Mitchell, our general traffic manager, is thoroughly conversant with this whole situation, and I had a great deal of correspondence with him last year about the bill then under consideration. I would like to have an opportunity to get Mr. Mitchell here, and he is now in Chicago, so that if there is an adjournment to be taken in order to have Mr. Brownell to come here to give the facts as to the lines in the general classification territory, I would like to have Mr. Mitchell here also.

Mr. STEVENS. So that you have no views of your own to submit this afternoon?

Mr. PAULDING. Not this afternoon. I think, so far as we are concerned, I would like to have the discussion from the practical standpoint and from the standpoint which would give us full opportunity to be heard.

Mr. STEVENS. Mr. Buckland, do you wish to be heard this afternoon?

STATEMENT OF MR. E. G. BUCKLAND.

Mr. BUCKLAND. I would very much prefer that these gentlemen who have had this matter in charge should do the discussing of it. I have been rather a spectator in this from the start. I think in section 4 of the act, where you make this requirement apply to a straight bill of lading as well as to an order bill of lading, you perhaps have incorporated in the act more than is necessary. I do not understand that straight bills of lading are negotiable, but they are usually used to show the contract, if such a word can be used, between the carrier and the shipper. They are not used as muniments of title upon which money is loaned, and it seems to me that the same safeguards are not necessary with reference to straight bills of lading that are necessary with reference to order bills of lading. If you enforce that now, practically, I can not see anything outside of the railroads applying the same rule with regard to goods shipped under straight bills of lading that they now apply to goods shipped under order bills of lading.

Mr. STEVENS. Would that apply to the converse?

Mr. BUCKLAND. Yes.

Mr. STEVENS. In what way?

Mr. BUCKLAND. Simply because a very large proportion of our commodities which are delivered at our freight houses—I mean delivered to the consignees—are delivered without the production of a straight bill of lading.

Mr. PATON. This section 4 does not refer to straight bills of lading.

Mr. BUCKLAND. I understand that, but it refers to the issuing of straight bills of lading, and the converse of that would be necessarily true, because if the bills of lading can not be issued unless the goods are delivered it must necessarily follow that the goods can not be delivered until the bill of lading is received.

Mr. WILLISTON. We do not see that.

Mr. BUCKLAND. Why, if the carrier is estopped to deny the receipt of the goods upon the issuance of the bill of lading, certainly no carrier or traffic man in his senses would think of delivering the goods until the receipt of the bill of lading. It stands very much like an elevator or warehouse receipt; it is a muniment of title.

Mr. WILLISTON. In the case of a straight warehouse receipt, the warehouse man does not take up the receipt any more than you do.

Mr. BUCKLAND. Do you mean an elevator receipt—a receipt for goods in the warehouse?

Mr. WILLISTON. The ordinary warehouse receipt is just like a straight bill of lading.

Mr. BUCKLAND. It is not up in our country. You have got to have your warehouse receipt and deliver it before you get your goods, just as you have to deliver up a check at a hotel before you can get your hat or coat. I was not arguing it from the standpoint of the legal obligation; I was arguing it from the standpoint of practical railroad operation. If a straight bill of lading estops a carrier to deny that the goods have been received, and if a straight bill of lading is only issued for goods that are actually received and the carrier is estopped to deny such receipt when a straight bill of lading is outstanding, then that bill of lading amounts practically to a muniment of title. I did not suppose that the bankers would insist upon such safeguards being thrown around a straight bill of lading. I had always supposed that they limited their strictures upon this law to the order bill of lading upon which they do, or, I venture to say, ought to do, their business, because an order bill of lading has a quasi negotiable character which is well known in the business world.

Mr. PATON. This bill is not only drawn in the interest of the banker, but in the interest of the man who pays the draft on the straight bill of lading, and very frequently it has happened in actual practice that a man has paid a draft on the faith of a straight bill of lading, and the goods have never been delivered to him because they were never received by the man who signed the straight bill of lading.

Mr. BUCKLAND. Why is it necessary for him to pay any draft on the straight bill of lading?

Mr. PATON. That is the course of business many times.

Mr. BUCKLAND. Do you mean to say that where goods are billed to you, the fact that you do not hold the bill of lading and present it will prevent them from delivering the goods to you on a straight bill of lading?

Mr. PATON. No; but they pay on the faith of that bill, and the fact that they are the consignee in the bill.

Mr. BUCKLAND. The point I make is that the fact that they have not the straight bill of lading does not prevent their receiving the goods in the course of business. If it does, then what is the difference between an order bill of lading and a straight bill of lading? That distinction has been drawn in all the conferences between the freight association and the Illinois Manufacturers' Association and all the conferences between the shippers on the one hand and the railroads on the other, and between the shippers on the one hand and the Interstate Commerce Commission on the other hand. The difference between the order bill of lading and the straight bill of lading is well known, and it does not seem to me that business ought to be hampered here by putting this requirement in with reference to a straight bill of lading, which is nothing but a receipt and a contract, a receipt for goods and a contract to carry them?

Mr. STEVENS. Then you have no objection to the provisions of section 4 as applied to the order bill of lading?

Mr. BUCKLAND. Without prejudice to my colleagues, personally I have no objection to the order bill of lading as the bankers want to have it. I think that the proviso which they have got in here regarding the protection to a carrier who can show that the goods were taken from it by law ought perhaps to be modified so as to conform to the common law requirement that when a carrier shall have shown the goods were taken from it by operation of law or by a person who has a superior title to that of the consignee, it ought to be protected. After all, we must not lose sight of the fact that we are engaged in the business of carrying goods, not insuring the title; that it is our business to transport those goods from one point to another and to deliver them to the man who is entitled to them. It does not necessarily follow that the man who has paid the draft and delivered the bill of lading is entitled to those goods. My friend here introduces a bill asking the railroads to guarantee title to the goods, which naturally meets with some objection on our part. I think they ought not either to guarantee the title or to be under the responsibility at all times of delivering the goods to the man to whom they are consigned, who holds an order bill of lading. It is a well-known maxim of the common law that when a carrier delivers goods to a man who holds the superior title to them it is relieved from responsibility as against the man who may hold the bill of lading. It seems to me, in all fairness, that it is up to the bankers to do a little of this walking themselves. I have not yet heard the note sounded that the bankers, at the place where these goods are put on board, need exercise any caution at all as to the character of the man to whom they are lending the money, or as to the character of the collateral. They say to you, "The railroads are good for this, and therefore they have got to stand all the loss." But the banks would not think of lending money on other collateral unless they knew something of the character of the man who brought the collateral to them, and there does not appear to have been, in any of the cases cited, any care exercised by the initial bank in determining the circumstances under which a given bill of lading was issued. We have all got to work together, to cooperate, in moving the commerce of this country, and the railroads ought fairly to bear their share of it, but it does not necessarily follow that they have got to do it all.

Mr. STEVENS. On page 4 of the committee bill, section 5, beginning with line 7, there is the following language:

And every carrier who himself, or by his officer, agent, or servant authorized to issue bills of lading, issues a false or duplicate bill of lading in violation of the provisions of section four, shall be estopped, as against all and every person or persons injured thereby who shall acquire any such false or duplicate bill of lading in good faith and for value, to dery the receipt of the property as described therein, or to assert that a former bill of lading has been issued and remains outstanding and uncanceled for the same property.

What have you to say as to that provision?

Mr. BUCKLAND. I think that that is the law in a good many of our States. The Supreme Court in the case of Pollard *v.* Vinson a long time ago held that where a ship's captain, I think it was, gave a bill of lading for property which was never received, the ship's captain was going outside of the apparent scope of his authority, and under the well-known law of agency the court found that the law of estoppel did not apply as against the carrier. I

think that has not been followed in New York, and how far it is the law of this country I am not sure.

Mr. STEVENS. The objection that is made to us, as shown by the hearings, and the fault is that it is the law in some States and is not the law in a great many other States. This results in an injustice, and of course an unfortunate disagreement as to rights being enforced, although the rights exist, and it is contended that it is extremely desirable that there should be a uniform rule to this effect, applying everywhere as far as Congress can make it, and that is what is asked for by this bill. Have you any objection to that?

Mr. BUCKLAND. The reason I have not any objection to it is that it does not affect our company. The law in our State and the territory through which we operate is practically this law.

Mr. STEVENS. Do you think, then, from your experience—and you have had some experience—that this results in any fraud upon the carrier? Do you know of any cases in which your company has been injured on account of the operation of this rule?

Mr. BUCKLAND. No, sir; but what might apply to our company in a closely settled, congested territory, handling a high grade of finished product as the initial carrier—because, as you know, our product is mostly high-grade cottons and woolens and brass and copper goods—might not apply to a company operating through a country that was not well settled, handling a low-class grade of goods, such as raw cotton, handled by agents who are located many miles from their headquarters, and who can not necessarily be inspected and watched as they could in our territory. I do not feel competent to discuss that for the transcontinental lines, because I do not know anything about that. So far as our company, operating through southern New England between Boston and New York, is concerned, I do not think that the application of that law will have any injurious effect, because it is practically the law we are operating under at the present time.

Mr. STEVENS. And I may state that the general counsel of the Northern Pacific told me to the same effect along that same line.

Mr. BUCKLAND. I will not answer for a company that is differently situated. The 2-cent law is a good thing for our company. I do not know that it is a good thing for all companies.

Mr. STEVENS. Are there any questions to be asked of Mr. Buckland?

Mr. MANDELBAUM. I would like to ask him one or two questions, Mr. Chairman.

Mr. STEVENS. Very well.

Mr. MANDELBAUM. You take exception to one provision in the bill, and according to your ideas, a railroad ought not to be held responsible if it has delivered the goods to a party when there is another who has title to them, or a better title. What better title could there be outside of any judicial proceedings than the actual holding of an order bill of lading?

Mr. BUCKLAND. I will tell you. Goods may be acquired by fraud and delivered to the railroad company. They may be carried, as they were in one case, and delivered to a consignee who holds the same title this fraudulent consignor may hold. The man who really owns the goods may come and demand them of the railroad company. Now, if the railroad company resists that demand it has got to face a lawsuit, and if the party holding the better title is successful in that

lawsuit the railroad company has got not only to deliver the goods, but it has got to pay damages for the detention, and pay the costs.

Mr. MANDELBAUM. I am still somewhat at a loss. After the goods have been shipped, what better title is there than the actual holding of an order bill of lading, outside of a judicial proceeding and the attachment by a sheriff or marshal, and so forth? I can not quite understand by what right the railroad company should claim to be the arbitrator in a case of that kind.

Mr. BUCKLAND. Just in this way. Let me give you a specific instance. There were six boxes of oranges stolen in Boston and shipped to an Italian vendor in Providence. While they were on their way the dealer who owned those oranges notified us that they belonged to him, and gave us evidence that they were stolen, and we delivered those oranges, on arrival, to him. If we had not, they would have come in with a replevin bill and brought suit and taken us into court and defeated us and made us pay damages and pay the costs.

Mr. PATON. This bill protects you by operation of law.

Mr. BUCKLAND. But it does not protect us at all against the operation of a suit.

Mr. PATON. How are you protected now?

Mr. BUCKLAND. Practically speaking, the way we are protected at the present time is this, that if we can show that our title was the proper title, we can compel them to interplead and try the title before the court.

Mr. PATON. Can you not do the same thing here?

Mr. BUCKLAND. Not necessarily, always. It puts you to the necessity of defending your title in any instance.

Mr. PATON. We can concede anything on that point. That does not cover the main object of this bill at all.

Mr. BUCKLAND. I did not suppose so. I was answering the gentleman's question and giving an illustration.

Mr. NEVILLE. You speak of the railroad company in the case of a bill of lading being enjoined by the legal holder.

Mr. BUCKLAND. I do not think I used the word "enjoined."

Mr. NEVILLE. Well, being notified by the legal holder that he owned those goods, and the shipper did not, what are you going to do with the merchant on whom that bill of lading is drawn. How are you going to protect yourselves? You certainly must know of those goods being delivered fraudulently within a day or two days of the time when the bill of lading was signed.

Mr. BUCKLAND. Yes.

Mr. NEVILLE. Take the loss of Droste & Snyder on eggs shipped by the Wabash road. Two days after Mr. Droste paid the draft the agent who signed the bill of lading notified him not to pay the draft, because the goods had been attached.

Mr. PATON. Because the goods had been attached before the railroad got them.

Mr. NEVILLE. The bill of lading had been signed by the agent and the draft had been drawn, and two days after Droste & Snyder had paid the draft attached to the bill of lading the few eggs he had in the cars had been attached by one of the banks, and the rest of the eggs had never been delivered to the railroad company, but for them the

railroad company had given a bill of lading. Then they notified Droste & Snyder not to pay the draft.

Mr. BUCKLAND. It seems to me, if I may be pardoned for saying so, that where the fault of your argument lies is that you allow the shipper to be guilty of as great a fraud as possible and put all of the responsibility upon the railroad company, whose agent may have connived with the shipper in the fraud. You put no obligation whatever on the bank that first discounts that paper.

Mr. NEVILLE. I am not speaking from the banker's point of view. I am an ordinary, plain merchant, and I am talking from the merchant's standpoint. So far as the banker's interest is concerned, I do not care—begging the pardon of the committee—a tinker's d——. I am looking after the railroads, who do not stand to lose a dollar on me until I have lost every dollar I have in the world.

Mr. BUCKLAND. Do you mean to say that if a bank turns over to you a bill of lading and just makes a clean indorsement on that draft, that you can not collect from that bank if you do not get what you pay for?

Mr. NEVILLE. I do not think so; not in my State. The bank does not indorse the paper.

Mr. BUCKLAND. No; it is only for collection; that is the point. It only does it for collection and makes itself the channel, and throws all the loss onto us.

Mr. NEVILLE. One minute; I am merely arguing that you should be responsible on a bill of lading issued by your agent, on the faith of which the consignee of those goods pays the draft, a bill of lading signed by your agent, stating he has received the goods. As for the quality of the goods, I as a merchant am willing to run that risk.

Mr. BUCKLAND. Supposing we follow the course of that bill of lading. When that bill of lading is issued by a railroad company it is taken to a bank, and the draft is drawn upon the person who eventually comes into possession of the commodities.

Mr. NEVILLE. Yes.

Mr. BUCKLAND. What does the bank do with that draft?

Mr. NEVILLE. I do not know.

Mr. BUCKLAND. It indorses it for collection, without recourse. It says: "We will take our discount out of this; we do not care what happens to it and we do not care anything about the character of you or anybody else concerned in it."

Mr. NEVILLE. I am not interested in that part of it, for this reason——

Mr. BUCKLAND. Well, I am.

Mr. NEVILLE. I am talking as a merchant. If you have anything with the bankers, that is for you to thrash out. I am in the position of a merchant. A shipper has shipped me cotton—just as in Droste and Snyder's case the shipper had shipped them eggs—and on the faith of bills of lading with drafts attached in previous transactions, the railroad company having delivered all the goods mentioned in previous bills of lading, I am suddenly stuck for a large amount of money because the railroad, two days after I have paid the draft—it was two days in Droste and Snyder's case—notifies me "No goods will be shipped," without giving me any reason why they will not be shipped. I am in the dark so far as that is concerned.

Take my own case in Texas, which happened two years ago last December, where I held bills of lading from a point in Texas on the Gulf, Colorado and Sante Fe Railroad, signed by the same agent that had been signing those bills of lading for five years. I had gotten out of that same town over the same railroad, on bills of lading signed by the same agent, an average of 25,000 bales of cotton a year. In the question at issue that I had with them, I had bills dating from the 10th of October to the 12th of December, aggregating $79,000 worth of cotton. They notified me on the night of the 24th of December that there was no cotton behind those bills of lading.

Mr. BUCKLAND. They afterwards paid you for it, did they not?

Mr. NEVILLE. They paid; but how did they pay? Why did they pay? Because I had them by the throat, and if they had not paid I would have put somebody in the penitentiary.

Mr. BUCKLAND. Somebody ought to be put in the penitentiary under those circumstances.

Mr. NEVILLE. What is a merchant going to do?

Mr. BUCKLAND. I will tell you——

Mr. NEVILLE. Please let me go on.

Mr. STEVENS. Let Mr. Neville finish his statement.

Mr. NEVILLE. I want to finish what I have to say, Mr. Chairman, and then he can answer after I get through.

Mr. BUCKLAND. I beg your pardon.

Mr. NEVILLE. What am I to do? Here am I, a merchant. I do not want to stop the commerce of the country. If the cotton merchants were to resort to the principle adopted by the dried-fruit people, the commerce in cotton in the United States would be tied up so tight that it would take six months to extricate it. The cotton business is done on faith. The people have faith in the bills of lading that the agent signs representing the goods, and when that faith is disturbed the merchants who handle the business of the country are going to look to it to see that something is done to guarantee that when they pay a draft, based on the signature of an agent of the railroad company, that railroad company is to stand for the signature of its agent, or they want to know why.

You stated that the Gulf, Colorado and Sante Fe Railroad Company paid that bill. They did, after six weeks.

Mr. BUCKLAND. I am only taking your own statement.

Mr. NEVILLE. After six weeks of suspense, and only after I put before the president and the vice-president of the railroad company a letter from the traffic manager of that company stating that the cotton covered by the bills of lading enumerated by us was on their platform at Belton, Tex., and would be delivered as soon as they could get orders to move it. That letter was dated the 27th of December, and was written without the knowledge of the auditing department. That is why we got our money, and not because of any honesty on the part of the railroad company or any inclination on their part to pay the claim or to make their bills of lading good.

Mr. STEVENS. Now, Mr. Buckland, if you will please make your statement.

Mr. BUCKLAND. I only want to say this: I think there is no issue between the railroads and the merchants of this country in regard to these bills of lading. What you say amounts to this, that whereas a railroad company gets paid its ordinary rate of freight and takes all

of these risks, the banker, who gets paid his ordinary rate of discount, takes no risks whatever; and Mr. Neville, in the case which he speaks of, evidently could not have gone to the bank to which he paid the money and could not have said to that bank: "You delivered to me something here that was fraudulent; I want my money back." But the banks of this country are simply saying: "We will take these bills of lading; we will discount them; we will make what we can out of them; we will get our pound of flesh out of them, and send them along, taking no risks whatever, taking no precautions in the beginning, and putting the entire burden upon the railroad companies." And that is not fair. The bank should cooperate with us and take some of this responsibility. The railroads are first of all carriers; the banks are first of all lenders of money; and it is just as much incumbent upon the bank to take precautions surrounding an initial shipment as it is upon the railroad company. And to-day if between the cashier of a bank and the agent of a railroad company at the initial point a fraudulent order bill of lading should be discounted the loss would fall upon the railroad company and not upon the bank, because the bank would absolutely and utterly disclaim any responsibility. They do not give you a clean indorsement, but they simply send it forward for collection. I think there is a little to be said on the side of the railroad company in reference to a little cooperation in regard to the financial responsibility here in regard to moving the traffic of this country.

Mr. Neville. I would like to state that in the early nineties there was a decision given in Texas in reference to a bank in San Antonio that was held responsible for the quality and weight of a shipment of cotton. It was decided against the banker and in favor of the consignee in the lower courts of Texas, but finally, when it got to the supreme court of Texas, it was decided in favor of the banker on the ground that the previous decision was unconstitutional.

Mr. Russell. I do not recall the case right now. I suppose you state it correctly.

Mr. Paton. Is that the case where they decided in Texas eventually that there was no liability?

Mr. Neville. Yes.

Mr. Paton. I think I can state the law of that proposition, if the committee will permit me.

Mr. Stevens. Very well.

Mr. Paton. It was originally held by the court of appeals in the State of Texas that the bank which had discounted a draft with a bill of lading attached, and collected that draft of the drawee, was responsible to the drawee as warrantor of the quantity and quality of the goods, on the theory that it not only purchased the draft but purchased the bill of lading and became owner of the bill of lading, and as owner was an implied warrantor of the contract. That decision was followed in North Carolina, in Alabama, and in Mississippi. It was subsequently repudiated in Texas and has always been repudiated by the supreme court in North Carolina, and is now the judicial law of only two States, Alabama and Mississippi. It is contrary to the doctrine of the Supreme Court of the United States and of the decisions of a number of state courts which have thoroughly considered the question and held that where a bank purchases a draft with bill of lading attached as security, and surrenders the security, it is not a

warrantor of the genuineness of the security or of the quantity or quality of the goods covered by the bill. That would answer Mr. Buckland's suggestion that the drawee, the cotton man who pays the draft, can go back on the bank. He can not in the majority of the States. The bank, even if it is a purchaser and not merely a collection agent in regard to that draft, is not a warrantor to the drawee as to the goods represented by that bill of lading.

Mr. RUSSELL. In the Texas case was the decision rendered by the court of civil appeals?

Mr. PATON. By the court of civil appeals.

Mr. RUSSELL. In the subsequent cases it was carried to the Supreme Court?

Mr. PATON. It was carried to the Supreme Court.

Mr. RUSSELL. And they reversed the decision?

Mr. PATON. Not in the same case. It was in a different case. The original case was Landor *v.* Laddon, decided in 1888.

On the proposition of unfairness because the banker is getting all the best of this deal, I understand Mr. Buckland to agree in the main, or at first at all events, to this section 4, which provides that the civil liability shall be upon the carrier for false bills; but he says subsequently, "I contend it is unfair; it is putting all the burden and risk on the carrier." Now, the banker does not want anything unfair; but as between the railroad and the banker, where the situation exists, as it exists in many parts of this country, that bills of lading are issued covering grain and cotton and lumber and shingles, where the goods originated in another city, is it unfair for the banker to go on the faith of that bill and say, "This is an agent whose signature I know, whom I know to be authorized to issue genuine bills of lading for goods received; I can lend my money on the faith of that bill of lading with the certainty that those goods have been received." I see nothing unfair in that proposition. Of course if a banker participates in a fraud that is a different proposition; but it seems to me only a reasonable rule, a rule which prevails with regard to warehouse receipts and with regard to all sorts of paper that enter into commerce, that where the agent is authorized to issue a document the principal is liable on that document if it falsely represents. A bank certificate of deposit, for example, a warehouse receipt, a certificate of stock issued by a transfer agent, overissued, going into the hands of a bona fide purchaser renders the corporation liable to the purchaser for the value. Why should not that rule be extended to bills of lading? What is there unfair about it? As a matter of fact it has been considered and so extended by the courts of 8 States in this Union, among which are New York, Pennsylvania, Kansas, and Nebraska—I can not name the others now—and in addition by the legislatures of some 12 States. They have decreed or enacted this very rule substantially as we have it here, that the carrier shall be liable to anybody injured who purchases a bill of lading, where the goods have not been received, making it unlawful for the carrier or his agent to issue a bill where the goods have not been received and making the carrier liable to any and every person aggrieved for all damages sustained therefrom.

It is necessary to the commerce of the country that this liability should exist, and the remedy, it seems to me, is with the carrier to assume the liability and to see that his agents are responsible men,

and if they are at fault they will go to jail and the carrier, as he should be, is liable for their false bills.

Answering the suggestion that the shipper goes scott free, we have a provision in here that a shipper who fraudulently takes out a bill where he ought not to is punishable criminally. This reads:

SEC. 5. That every carrier, or officer, agent, or servant of a carrier, who knowingly violates the provisions of section four of this act, and every person who receives from a carrier or officer, agent, or servant of a carrier, and negotiates or transfers for value a bill of lading known by him to have been issued in violation of said section four, shall be guilty of a misdemeanor.

Mr. BUCKLAND. Let me ask you this in that connection: Is it your idea that if an agent of a carrier, without the knowledge of the carrier, issues a bill of lading, the carrier will be liable criminally?

Mr. PATON. Without the knowledge of the carrier?

Mr. BUCKLAND. Yes. Suppose in a small town in the South the station agent issues a bill of lading for cotton which he never receives, is it your idea that the railroad company itself shall be liable to a fine for that?

Mr. PATON. No; it does not so state.

Mr. BUCKLAND. I did not suppose so.

Mr. PATON. It says "the carrier," meaning the individual carrier, or its officer, agent, or servant. You will find, by close reading, that it provides just as I say, that an individual carrier, or an officer, agent, or servant of the carrier, who issues a false bill, shall be criminally liable where he knowingly does it.

STATEMENT OF MR. PAULDING.

Mr. PAULDING. I would like to ask a question, Mr. Chairman, before I have anything to say. I have before me a bill headed "Committee print. A bill relating to bills of lading," and on examination of that I find that it is very different, both in form and substance, from the Maynard bill, which I have hitherto understood was before this committee and the subcommittee. The question I would like to ask is, which bill are we discussing—this Maynard bill or the bill we have before us now?

Mr. STEVENS. The situation is this: The Maynard bill is the one upon which the committee is acting. In the course of this action objections were found to the Maynard bill, legal objections, as well as practical and legislative objections, so that these gentlemen who are pressing for this legislation, whom you see here, prepared a bill which is printed for the information of the committee as a committee print; so that practically the committee print is the one that we would like to have discussed and that you gentlemen should address yourselves to. The Maynard bill will not be reported in the form in which it is now before the committee.

Mr. PAULDING. I asked the question simply to clear up the situation and a misunderstanding between Mr. Buckland and myself. Both Mr. Buckland and I were in doubt as to which was before the committee.

Mr. STEVENS. You had better address yourselves to the committee print.

Mr. PAULDING. There is one thing in reference to what Mr. Paton has said in regard to Mr. Buckland's remarks on section 4 of this bill,

namely, as to the unfairness of making the railroad responsible for everybody else's fraud. In defending a great many actions against railroads on claims on bills of lading and shipments, Mr. Chairman, I have many times seen—the percentage of cases, of course, is small, but the aggregate is large—that claims are made in the manner of which Mr. Neville told us; that is, that at a small station a shipper who is known to the agent will come to him and say, "I am going to ship so much property; issue me a bill of lading." The agent, relying on the representation of the man, who is known to him and who has shipped from that station before, issues that bill of lading. The bill of lading is put through the bank in the usual course of business and the property does not come. That is a fraud upon the part of the shipper. There is no fraud there upon the part of the railroad company. The bank is imposed upon. Why? Because the bank in the first instance does not take the precaution to satisfy itself that that property is upon the tracks of the railroad company or is about to be shipped. The fault there in every instance is absolutely with the bank. There is a fault undoubtedly with the agent of the railroad company in issuing that bill of lading before the property is given to him for shipment; but he relies upon the shipper. The shipper has shipped before. He has no reason to believe that a fraud is about to be perpetrated on him or attempted to be perpetrated upon the bank. It is the business of the bank to satisfy itself, is it not, sir, that that property is there or is about to be shipped, and if the draft goes forward and is presented for payment to the consignee, has not the consignee the right to believe that the original bank has satisfied itself that the property was there before it loaned the money or advanced the money upon the bill of lading?

Mr. STEVENS. Suppose the bank only takes it for collection; what then? What have you to say about the right of the consignee on paying the draft?

Mr. PAULDING. His remedy is against the shipper for the fraud.

Mr. STEVENS. Suppose the shipper has perpetrated a fraud and skipped out, or something like that; what about the obligation under the bill of lading in such cases?

Mr. PAULDING. I am not so sure that the obligation is that of the railroad company or that of the agent. Of course in our State that is fixed; we do not have to discuss it.

Mr. STEVENS. No; but the agent is worthless and the shipper is worthless, and the course of business is such that the consignee would seem to have had a right to rely upon the bill of lading as the agent issued it and as it was followed in due course of business for collection, would he not?

Mr. PAULDING. Then his remedy is against the railroad, and is now, sir.

Mr. STEVENS. In all the States? That is the point.

Mr. NEVILLE. No, sir.

Mr. PAULDING. I have this to say, that if that draft was forwarded for collection, nobody pays out that money.

Mr. NEVILLE. The consignee pays it.

Mr. PAULDING. He is expected to pay it, but does not pay it until the goods arrive.

A number of gentlemen. No, no.

Mr. STEVENS. You hear the chorus. [Laughter.]

Mr. PAULDING. I do not understand. I thought that when a draft went forward for collection it was not paid until the goods were delivered.

Mr. BUCKLAND. I always supposed those drafts were discounted at the point of collection.

Mr. PAULDING. Will not some of you gentlemen explain the situation?

Mr. MANDELBAUM. In the first place, I am talking to you particularly of the line of business Mr. Neville and myself are in, the cotton business. The cotton is shipped and the bill of lading is forwarded and the draft is paid as soon as the bill of lading and the draft are presented.

Mr. STEVENS. Who pays the draft first?

Mr. MANDELBAUM. The bank.

Mr. STEVENS. What bank?

Mr. MANDELBAUM. At the initial point.

Mr. STEVENS. That is what Mr. Buckland wants to know.

Mr. MANDELBAUM. I am not so much interested on that point; but as they claim—I am very particular about that, as they claim—it is for collection. But that does not change the fact in any way whatever that as soon as that draft with the bill of lading is presented, the consignee has to pay it. On the average it takes about four or five days for those goods to arrive at New York, and in some cases—four or five or six—I have known where it took three or four months for the goods to arrive, and the goods were paid for all that time. You speak of a small shipping point only, but these matters have happened just as much at the larger points as at the smaller points. There have about a dozen cases originated in a space of time not more than two weeks in Birmingham, Ala., where the station agent there issued a bill of lading on cotton which he never received, and yet, strange as it may look to you, that very agent to-day is the agent for the railroad company, which shows conclusively to a certain extent that he acted under the authorization of the railroad company. Mr. Droste, who I am sorry is not here to-day, had a half a dozen similar cases where he paid drafts on bills of lading issued when the goods were not received, and in every instance the same agent is to-day retained by the same railroad company, which shows that it was the railroad company which extended that time to the shipper as a direct or indirect rate cutting. It is giving him favor for the purpose of making him ship his goods over that line and over no other. It is to some extent an illegal practice. But be that as it may, what I state to you to-day are absolute and incontrovertible facts.

Mr. BUCKLAND. May I ask a question or two of Mr. Mandelbaum?

Mr. STEVENS. Certainly.

Mr. BUCKLAND. It is, is it not, with the object to facilitate the commerce of this country that these bills of lading when issued are taken to a bank and a draft is attached; and the man who deposits that bill of lading in the bank immediately has some portion of the value attached to that bill of lading passed to his credit?

Mr. MANDELBAUM. Almost all of it.

Mr. BUCKLAND. Almost all of it?

Mr. MANDELBAUM. Yes; except in some instances he owed the bank before he got the draft.

Mr. BUCKLAND. He has that passed to his credit, so that he is at liberty to draw the money out and put it into his pocket?

Mr. MANDELBAUM. Yes.

Mr. BUCKLAND. And then the bank discharges its obligation to him and then looks to a similar bank to discharge the obligation to it?

Mr. MANDELBAUM. Yes.

Mr. BUCKLAND. So that those bills are discounted and are not forwarded in the regular course of business?

Mr. MANDELBAUM. Yes; and to a certain extent sent for collection.

Mr. BUCKLAND. That is called trade paper, is it not?

Mr. MANDELBAUM. One minute. This, however, does not change the fact, and it is the only fact with which we have to do, that the courts of most of the States, including New York, have held that the bankers are not responsible.

Mr. BUCKLAND. What I am getting at is this, that the banks discount that as trade paper.

Mr. MANDELBAUM. Yes.

Mr. BUCKLAND. I am sitting on the board of directors of a bank, and we get a certain rate of discount for doing that work. That is where the bank earns its money. Now, the bank does not, when it turns that over to the next bank, make a clean indorsement of it. It simply sends it forward for collection and indorses it "without recourse." It is only in the position of loaning the money at a certain discount; as you being a reputable man, it would loan money to you on your paper that you presented to it.

Mr. MANDELBAUM. I am not inclined to controvert your statement in any other way except by the fact that the courts of most of the States have held that the banks are not responsible. That is conclusive, so far as we are concerned, that they have decided against us, and no matter what your opinion or my opinion might be as to the matter—and I believe mine is exactly the same as yours—we are confronted with that fact, not by what we would like, but by the fact, and the fact is that the courts of most of the States have held that the banks are not responsible.

Mr. BUCKLAND. Then, in view of the fact that most of the courts of most of the States have held that the railroads are not responsible and that the banks are not responsible, do you not think that any law which seeks to remedy that situation should include the banks as well as the railroads?

Mr. MANDELBAUM. I have nothing to say as to that point. I will let the banks speak as to that.

STATEMENT OF PROF. SAMUEL WILLISTON.

Mr. WILLISTON. There are just one or two points in the argument as to which it seems to me a word might clear up a little the situation. In the first place, the suggestion was originally made by Mr. Buckland that section 4 ought not to include straight bills, and that if it did it virtually made the straight bill a muniment of title. We do not think the straight bill ought to be made a muniment of title. To that extent we are entirely in accord with Mr. Buckland; but in order for a paper to be muniment of title as to goods that are shipped it must have two effects. It must be both a valid representation, estopping the railroad, that goods have been received, and it must

also be a valid representation that the goods will be kept until the document of title is returned. Unless that last is true, a holder of the paper gets nothing that is worth anything.

Those two things have no necessary connection. A paper might be a valid representation that goods have been received without being a valid representation that goods would be kept until the document was surrendered; and that is just what we say the straight bill is, a valid representation which should bind the corporation issuing it, that the goods have been received, although it imposes no obligation on the railroad to keep the goods until the document is surrendered.

The practical importance of this has already been suggested, namely, that on straight shipments consignees constantly pay the price of the goods on the faith of the straight bill of lading. They do that and do it reasonably, because they say to themselves "I have the railroad's representation, through its agent, that these goods have been received by the railroad and shipped to me. If they have been received and shipped to me I am perfectly safe. I am ready to pay the draft." Accordingly, the consignee does, as a matter of business practice, pay that draft in such a case. Paper of that sort; that is, straight bills, is of no use for a bank to take as security, and a well-advised bank will not, but a well-advised consignee will, because a straight bill is like a nonnegotiable promissory note; it can not carry full rights to an endorsee, but to an original payee, or in the case of a bill of lading to the consignee, it should be a valid representation and obligation on the part of the railroad. The carrier is simply dealing here with the very party that his own bill of lading runs to, and the carrier, it seems to me, can not object to the very person to whom the bill runs, relying on the statement in it.

A single word, also, I might say in regard to the situation of the bank. Mr. Mandelbaum's words indicated that consignees are not all of them perfectly satisfied with the law which prevails between the banker and consignee. The law is very well settled, practically universally, that if the drawee of a bill of exchange pays it to a bona fide holder of it he can not get his money back. It does not matter if the bill of exchange itself is forged; much less does it matter if the bill of lading or security behind it is forged. The drawee is not a purchaser of the paper. He is simply one who has been ordered to pay and who has chosen to obey the order. Now, there are consignees to whom that seems a harsh rule. Here it does not make any difference whether it is a harsh rule or not, for it is a rule which has nothing to do with interstate commerce and can not affect this question one way or the other. For myself, I think the rule is right, I should say. It is a disputed question, but it is a dispute which, as I say, need not come in here, because it has nothing to do with interstate commerce. Congress could not legislate in regard to it. But as the bank stands behind, and ought to stand behind, paper issued by its agents, so the railroad ought to stand behind paper issued by its agents. For myself, I have always heartily disagreed as a matter of common law with the English decision in Grant *v.* Norway, which has made this legislation necessary, because that case started the decisions in this country running the same way. I think it is wrong at common law. I think at common law the railroad should be

liable for the bills of lading which an agent whom the railroad has put there to issue bills of lading has sent out upon the public; and as the common law has gone astray in this particular—and that it has gone astray I think is shown by the contrary law of the rest of civilization—it seems to me appropriate to correct it by statute.

Mr. BUCKLAND. In this doctrine of estoppel it is essential that there should be not only a fase representation made with the intent to deceive, but that it should be acted upon to the damage of the party who relied upon it. In the absence of any statement by the carrier that the carrier was not responsible for the keeping of the goods, would it not be a question of fact as to whether a consignee was or was not entitled to rely, on the carrier's side of it, upon his keeping the goods?

Mr. WILLISTON. Whether he was entitled to rely?

Mr. BUCKLAND. Yes.

Mr. WILLISTON. I think as an original question, yes. I think the reason that a purchaser of an order bill of lading does have a right to rely on the carrier keeping the goods until the bill of lading is surrendered is because of the existence of a practice which is three hundred years old of carriers doing just that and of purchasers buying in that way.

Mr. BUCKLAND. Your answer having referred to the order bill of lading, my next question follows: Why would it not be wise, in making legislation to move the commerce of this country, to provide that those bills of lading where the consignees are entitled to rely upon the carrier keeping the bill of lading until the goods are delivered should all be order bills of lading, stamped with that characteristic of quasi negotiability, if I may use that term?

Mr. WILLISTON. I entirely agree. I think that one who takes a straight bill should not have a right to rely upon the carrier keeping the goods. I think he has a right to rely upon the carrier having received the goods. but not upon the carrier keeping them.

Mr. BUCKLAND. But if you should know that 90 per cent of the commerce of the country is moved on straight bills of lading, and if you were confronted with the fact that it is practically a thing altogether impossible for all parties to surrender a straight bill of lading when deliveries are made——

Mr. WILLISTON. That is my understanding.

Mr. BUCKLAND (continuing). Would you not say it was better, wherever there are any financial collections involved, that they should rely upon the order bill of lading rather than the straight bill of lading, as a matter of good railroading?

Mr. WILLISTON. Well, not too much. I have been told by railroad men, and have been told by warehousemen the same thing as to warehouse receipts, that if order documents were always demanded the result would be to tie up commerce; that railroads and warehouse men could not go through the machinery of requiring the surrender of the documents in the case of all shipments, and that therefore it was convenient and desirable that 90 per cent of the transactions should be on straight paper.

Mr. BUCKLAND. But not to surrender the bill of lading necessarily, but delivery to precede it?

Mr. WILLISTON. Of course, that carries with it the consequence that that sort of paper shall not be required to be surrendered.

Mr. BUCKLAND. Now let me direct your attention to one more point you brought out, and that is as to the relative obligations of a drawee and of a series of indorsers and indorsees upon negotiable paper. Take the familiar instance of a man drawing a draft to his own order and then indorsing it in blank and attaching it to an order bill of lading, which he also indorses in blank, the only thing upon the bill of lading being the order of the consignor, "Notify John Smith;" would you say that John Smith, in that case being the ultimate party to whom these goods come, is the drawee of that draft?

Mr. WILLISTON. No; I should not.

Mr. BUCKLAND. So that the rule of law which applies to the ordinary drawee would not apply to that case, which is the ordinary case of the order bill of lading.

Mr. WILLISTON. It is the ordinary case of the order bill of lading, but it is not the ordinary case of the bill of exchange which goes with it.

Mr. BUCKLAND. Is it not?

Mr. WILLISTON. No; I think not.

Mr. BUCKLAND. Let us straighten that out a little. The ordinary order bill of lading is this way, is it not? I have reference to cotton because I perhaps know more about that than I do about any other commodity shipped. Cotton is sold by a consignor in Texas or Louisiana or Alabama and shipped to a broker—I ought not to say sold, but cotton is shipped to a broker—and an order bill of lading is attached and a draft is attached. That broker at the time when the cotton is shipped has not sold it, but he may sell it while the cotton is en route or after the cotton gets into the warehouse of the railroad company. Nobody knows who is to be the ultimate owner of the cotton. In that case the broker can not be the consignee of the bill of lading.

Mr. WILLISTON. You mean the consignee of the bill of lading or the drawee of the draft?

Mr. BUCKLAND. I mean both.

Mr. WILLISTON. They are quite different propositions, and must be kept separate.

Mr. BUCKLAND. I appreciate that very fully; but the draft, as I understand it, is drawn to the order of the consignor just as the bill of lading is drawn to the order of the consignor. The draft is indorsed in blank and puts upon the drawer all the responsibility not only of a drawer but of an indorser, and is passed on from hand to hand.

Mr. WILLISTON. Of course, that form of the transaction would be possible, and on that form of transaction, if the broker, to follow your simile, at the point of destination went to the bank and bought that draft, he is not properly called the drawee, he is a purchaser of the draft, and the bank from whom he purchased it is subject to the ordinary implied warranties, I should say, of a seller of negotiable paper, and the seller of negotiable paper is subject to certain obligations, even though he does not indorse. But I take it the ordinary case is that although the bill of lading runs as you suggest to the consignor's—the shipper's—order, and he indorses it and it has nothing on it but "Notify John Smith," or perhaps not even that, the bill of exchange, the draft, is drawn on John Smith.

Mr. PATON. How is the form of the draft pertinent to anything in this bill?

Mr. BUCKLAND. Only with reference to the argument which you gentlemen have advanced as to the difference between the liability of the indorsee and a series of indorsers.

Mr. WILLISTON. There is that difference.

Mr. NEVILLE. I just want to suggest one thing, Mr. Stevens, if Mr. Buckland will permit.

Mr. BUCKLAND. Professor Williston has the floor.

Mr. NEVILLE. I just wanted to correct one remark Mr. Buckland made with regard to the action of the consignee—with reference to the broker. I do not know what section of the country you have been accustomed to operate in.

Mr. BUCKLAND. I refer to Fall River and Providence.

Mr. NEVILLE. I am not familiar with that region, Fall River and Providence, but in Boston and other spinning centers it is not handled that way. In 75 per cent of the instances the broker gives the credit when he confirms the sale, and the draft is drawn with the bill of lading attached on the bill and not on the banker.

Mr. BUCKLAND. You have a very large number of shipments made on consignment?

Mr. NEVILLE. Not these days. That was a common practice ten or fifteen years ago, but it has changed greatly in the last five years.

Mr. BUCKLAND. Up in our country they utilized our cars for storage until they could sell the cotton.

Mr. NEVILLE. That was the mills taking advantage of your kindness.

Mr. BUCKLAND. It was the brokers taking advantage of it.

Mr. WILLISTON. I would like to ask Mr. Stevens if it is not unusual for a bill of exchange which is secured by a bill of lading not to be drawn to some specific drawee?

Mr. STEVENS. Yes; it would be very unusual.

Mr. WILLISTON. And the bank would be very reluctant to handle that kind of paper?

Mr. STEVENS. I do not know of any such instances.

Mr. PATON. I think, if the chairman will permit me, that all these arguments as to the draft are misleading. This has nothing to do with the bill at all. It was brought out by Professor Williston that not only was the drawee of a draft not responsible for the bill of lading attached to the draft, but the drawee of the draft was not responsible even if the bill of lading was forged. It comes from the common-law rule that the drawee must know the drawer's signature. But, however that may be, it is not pertinent to this matter, and we are getting away from the merits of the matter.

Mr. STEVENS. Do you desire to continue your remarks, Mr. Paulding?

ADDITIONAL STATEMENT OF MR. PAULDING.

Mr. PAULDING. I would like to say this, Mr. Chairman: If this committee print provides for two kinds of bills of lading, one the order bill of lading, which is negotiable, and the other the straight bill of lading, which shall be under the terms of the bill nonnegotiable—I presume that is what is intended by putting in the words "The bill

shall have prominently stamped upon its face the words 'Not negotiable'"—I do not see why, where the transaction is entirely between the consignor and the consignee and no third persons are interested in the value of the property, it should be necessary to put in section 4 the provision that it shall be unlawful for the carrier to issue a straight bill of lading without the actual possession of the property. If Smith in Buffalo ships property to Jones in New York and it is consigned straight to Jones, he can not raise any money on that bill of lading. The money has got to be paid to him by Jones, and Jones does not have to pay the money to him before the property is delivered to him.

Mr. WILLISTON. That is just what Jones does.

Mr. PAULDING. Then if we come to that, why does Jones do it? Is not the remedy with Jones in that case?

Mr. BUCKLAND. Everybody is to blame.

Mr. DUNKAK. The railroad is responsible for that. That is the inception of it. They issue the bill of lading without receiving the goods, and that is what makes the fraud possible.

Mr. PAULDING. What makes the fraud possible is your paying for the property without receiving it.

Mr. DUNKAK. We would not pay for the property unless we received a bill of lading stating "received from so and so, so many goods," and we take that to mean what it says, that it is a receipt for goods actually received, and the law says that if the goods are not actually received the railroad is not liable.

Mr. PAULDING. I do not see why the railroad should be liable for your unbusinesslike methods.

Mr. DUNKAK. The draft would never be presented to us for payment without the existence of a bill of lading signed by the authorized agent of the railroad; consequently the fraud is conceived on the part of the railroad.

Mr. PAULDING. I do not quite agree to that part of the proposition, that it is conceived by the railroad.

Mr. STEVENS. I think the facts are well presented, and now the argument may continue.

Mr. PAULDING. That is about all I have to say on the subject. A nonnegotiable instrument is entirely a transaction between two parties, and no third persons are injured, and the remedy is in the hands of those parties themselves. It seems to me superfluous to put in a statute of this sort a provision that a straight bill of lading can not be issued unless the property is in the hands of the railroad company.

Mr. STEVENS. You stated at the beginning of your argument that you had had considerable experience as to the collection of claims for your company.

Mr. PAULDING. Yes.

Mr. STEVENS. You represent the New York Central and Hudson River Railroad Company?

Mr. PAULDING. Yes.

Mr. STEVENS. And that company does one of the largest businesses in the shipment of merchandise in the United States?

Mr. PAULDING. A very large one, at any rate.

Mr. STEVENS. Have you had many cases where claims have been made upon your company upon bills of lading where the goods have never been received by the company—upon fictitious bills of lading?

Mr. PAULDING. I do not recall any, Mr. Chairman, and I may say, if you will permit me to add, that the instances which have come before me of bills of lading being issued without the delivery of the property to the railroad—that is, being issued in advance of the delivery of the property—have all been cases in the West and Southwest. We never had the property; we never had anything.

Mr. STEVENS. And most of the business of that character in your company would come before you in one way or another; you would know something about it?

Mr. PAULDING. Up to within a year I would know all about it.

Mr. STEVENS. And in your experience there have not been many cases arising in your territory?

Mr. PAULDING. I do not recollect any of that nature.

Mr. STEVENS. Do you know whether there have been many cases coming through your territory or into your territory arising in other parts of the country?

Mr. PAULDING. That is rather hard to say, and for a very good reason.

Mr. STEVENS. I mean, have you had any come to your attention?

Mr. PAULDING. I was about to explain that it is rather hard to tell, for the reason that matters of that sort, where there is a suspicion that the bill of lading was fraudulent, would be referred back to the railroad from which the property would be supposed to have come to us, if it had ever been shipped, and we would hear nothing further about it. The initial line would take care of it.

Mr. STEVENS. The other two members of the subcommittee necessarily have been obliged to leave, and both of them are desirous, first, of hearing the two gentlemen Senator Faulkner has referred to; and, second, of closing this matter up as quickly as we can. It has been allowed to drag because we could not help it. I would ask Senator Faulkner at what time he could have his two men here?

Mr. FAULKNER. I only spoke of Mr. Brownell, who was chairman of the committee who conferred with the Shippers' Association of Chicago and other shipping representatives and the Interstate Commerce Commission and agreed on this uniform bill of lading that has been promulgated by the Interstate Commerce Commission, and who was the one I expected here to discuss and take up these questions to-day. As an additional reason why I think time should be given, Mr. Chairman, I am frank to say that I had never seen this bill before, as amended by the committee, and I have not sent this bill to Mr. Brownell. Whatever addition has been made here by the committee, and I have not been able to read over during the discussion, Mr. Brownell's attention has not been called to it, because I did not know of the existence of this print. This is the first information I have had of it, and I think it is the first you have had, Mr. Paulding.

Mr. PAULDING. Yes.

Mr. FAULKNER. I think this is the first notice you have had, Mr. Buckland?

Mr. BUCKLAND. This is the first I have had.

Mr. FAULKNER. I want to be as accommodating as possible. You know these general counsel are very busy men; but if you can fix on some day during the first part of next week I am satisfied I can have Mr. Brownell here.

Mr. STEVENS. Can you make it Tuesday or Wednesday of next week?

Mr. FAULKNER. Yes; and if I find that he can not be here I will communicate with you, so that you will not have to have any delay.

Mr. STEVENS. Time is pressing, and the condition of business in the committee is such that we can not take up any matter before Tuesday, so that there would be no use hurrying to bring him here before that. We have hearings up to Tuesday, I think. It would be just as well to have the hearing either Monday or Wednesday of next week.

Mr. FAULKNER. If it will be agreeable to the chairman, I will telegraph him at once, this evening, and urge Monday if possible, and if not, then Wednesday, under the instructions of the chairman, and I will communicate the result to the chairman; so that if Mr. Brownell can not come either day the chairman will not have to delay the action of the subcommittee.

Mr. STEVENS. We have heard from these other gentlemen frequently, and we do not need anything more from them; but we are anxious to hear from your people and especially from the representatives of the southern railroads if any of them care to be heard from in this matter, and I would suggest that you forward them copies of the hearing and of the committee print.

Mr. FAULKNER. I will do so at once, sir, this evening. I reckon we had better make it Wednesday, definitely.

Mr. STEVENS. Would it not be better for us to fix it, then, at 10 o'clock on Wednesday?

Mr. FAULKNER. Yes.

Mr. BUCKLAND. I shall be in Chicago at that time and it will be impossible for me to be here, and I do not know that it is necessary for me to say anything more, anyway. I only want to say this with reference to this section 4, that if the straight bill of lading is allowed to remain in section 4 in the terms in which it is now incorporated I should feel, as a railroad counsel, that the only safe thing to advise my company would be that they must not deliver goods consigned on a straight bill of lading until the bill of lading itself is surrendered. Now, I say that not as a threat or anything of that kind, but I do not think it would be a safe legal proposition for me to advise them to do anything else.

Mr. STEVENS. Do you not think that you, representing the railroad companies, could take this committee print and examine it at your leisure and submit to the committee or to the chairman of the committee, Colonel Hepburn, whatever suggestions you have to offer that might assist us somewhat? Of course, we would be very glad to hear you orally if you are here, and if you are not here you might go over the print and make such suggestions as you see fit, so that we may have them when we take up the bill for report to the full committee. These gentlemen representing the bankers and shippers have done that, and their views are in this committee print. We would like to have your views in opposition, in the way of modification.

Mr. BUCKLAND. I understand that the committee print is practically the views of the bankers and business men?

Mr. STEVENS. In a sort of way, it is.

Mr. NEVILLE. I would like to ask Mr. Buckland if section 4 is the only part he objects to in the print?

Mr. BUCKLAND. I really have not had opportunity to examine it as carefully as I would like to examine it. I may say that that is my principal objection to it.

Mr. Paton. With regard to Mr. Buckland's point, it is possible that there could be added to this bill an express provision relating to straight bills of lading, so that the taking up of the bill would not be required.

Mr. Buckland. I could not speak for the other railroads. I only speak for my own.

Mr. Paton. I am only speaking of covering your point. Your point is that the carrier which issues the straight bill of lading without receiving the goods shall be estopped to deny the receiving of the goods. Your point is that that would make it dangerous for him to deliver these goods without taking up the bill. To obviate that, I see no reason why there should not be added to this bill a provision that the surrender of the straight bill of lading would not be required on the delivery of the goods, because the goods are always delivered to the consignee mentioned in the straight bill of lading. That is my first impression, on consultation with Professor Williston.

Do I understand that Wednesday at 10 o'clock will be the final day for a hearing?

Mr. Stevens. The final day.

Mr. Paton. And that if the attorneys do not find it convenient to to be here, at all events it will be closed up then?

Mr. Stevens. They can submit whatever they see fit, in writing. Is there anything further? If not, the committee will stand adjourned.

(At 3.30 o'clock p. m. the subcommittee adjourned until Wednesday, February 3, 1909, at 10 o'clock a. m.)

Subcommittee on Bills of Lading of the
Interstate and Foreign Commerce Committee,
House of Representatives,
Washington, D. C., Wednesday, February 3, 1909.

(The subcommittee met at 10.30 o'clock a. m.)

Present: Representatives Stevens (chairman), Lovering, and Russell.

Present, also, Representative Bartlett, of the full committee, Hon. C. J. Faulkner, and delegations representing various railroad, banking, and shipping interests.

The subcommittee thereupon resumed the consideration of a proposed bill relating to bills of lading.

STATEMENT OF MR. C. C. McCAIN, CHAIRMAN OF THE TRUNK LINE ASSOCIATION.

The Chairman. Mr. McCain, please state your official title.

Mr. McCain. My official title is chairman of the Trunk Line Association; and, in connection with this matter, I appear as chairman of what is known as the Uniform Bill of Lading Committee. I do not know how much information the committee has had respecting what is now known as the uniform bill of lading, or whether it is informed as to the work and negotiations that took place to bring that bill of lading into its present shape.

Unfortunately my own information, as well as that of my associates on the committee, is very meager with respect to just what has transpired before this committee in this connection. The only information I have is derived from a copy of the hearing that was held here in December. As this omits to make any very full reference to the work of that committee, I want to explain very briefly for the benefit of the committee how the uniform bill of lading was brought about.

Certain features of the old bill of lading, some four years ago, were not satisfactory to certain western shippers, and complaint was brought before the Interstate Commerce Commission by the Illinois Manufacturers' Association. After a hearing before that commission the commission suggested that the interested parties, the shippers on the one side and the railroads on the other, ought to get together and try to create a bill of lading which would be mutually satisfactory. As a result of that negotiations were undertaken and continued almost four years. During that time the carriers' committee met with the bankers' committee on several occasions, and the Interstate Commerce Commission gave a formal hearing, at which the bankers, shippers, and carriers appeared, either through representatives of their respective organizations or individually as shippers, bankers, and carriers; and numerous informal conferences were held between the counsel of the carriers' and shippers' committees and the Interstate Commerce Commission.

The CHAIRMAN. Right there, I would like to ask a question. In these conferences did there seem to be a three-cornered controversy? That is to say, did the shippers and the bankers and the railroads each present their own point of view?

Mr. McCAIN. Yes; they each presented their own point of view; and I felt, after we had finished the conferences with the commission that substantially all interests were satisfied.

The commission, as you know, following that issued its report and recommended the adoption of the bill of lading which was drafted. It was given out to be effective on September 1. A large number of shippers throughout the country had always been in the habit of preparing their own forms of bills of lading, because they preferred to do so in order that their bills should be part of their official accounting records, and to describe their particular character of traffic, and, generally, for their convenience. It was stated then that the time allowed them in which to print their new forms of bills of lading was too short. They came to us and said the time was too short to allow them to rearrange all their methods and to get their new forms into shape, as the commission required, by the time prescribed; and we granted an extension of time to January 1. Then we received a great many requests from shippers saying that they had large stocks of their own forms on hand, etc., and asking for a further extension, and a further extension was granted until February 28. That extension means the time within which the shippers shall print their own bills of lading to conform to the form prescribed by the commission.

The CHAIRMAN. The objection, then, is to not having an opportunity to use the stock they have on hand, and is not to the terms——

Mr. McCAIN. No; I was going to explain that. There is no objection that has come to us as to the fundamental features of the bill, such as the terms of contract, and conditions. The objection that

we had was that the time was not sufficient to allow them to get their forms in shape to have them conform to their accounting methods, and to carry out the same method of doing business (in which the bill of lading was a document) as they had followed heretofore. So the time was then extended to February 28. The carriers immediately proceeded to adopt the new form.

Let me explain that I am speaking now for what is termed the "official classification territory," being the territory east of the Mississippi River and north of the Potomac, which you well understand. Throughout that section our interests immediately arranged for the adoption of the new bill. It was a very expensive proposition to a great many of the roads. One road threw away 4,000,000 bills of lading of the old form in order to adopt the new form. It was very expensive by reason of the requirement, now a little different from what it was formerly, of the three forms which were prescribed—the bill, the shipping order, and the memorandum acknowledgment, so termed. But all of the roads now have those new forms in operation.

A very large number of the shippers are still using their old forms under our extension, up to February 28.

In explaining those negotiations the point I wish to make is that we do not consider that the new regulation and the new bills of lading have been given such a fair trial as we think they should be given. As to the order bill of lading, I think you understand that it has now been given distinct characteristics. The bankers' views in that respect were met, and we have now a distinct order bill of lading, distinct in its color and distinct in its terms of contract, so far as it is necessary to distinguish the order bill from the straight bill.

The CHAIRMAN. Was that the essential thing that the bankers insisted upon at those meetings?

Mr. McCAIN. It was one of their strong arguments, that we should have a distinct order bill of lading. Now, when that was about to be put into operation it was a question with the carriers as to whether they should not go further and surround those bills with some safeguard in their use. It was even suggested that they should be, possibly, given a serial number, put up in books, if you please, and surrounded with the same care in the agent's hands as tickets are given. That was found to be a very expensive thing to do. Instructions were given by the roads as to the use of the new bill. Special attention was drawn to the character and appearance of the new order bill, and it was thought that with those instructions (which were not only issued by the bill of lading committee, but gradually issued by the railroads, and very carefully drawn) they had sufficiently impressed the agents of the carriers with the new form of bill of lading, and to insure its intended use.

Now, directing just a few remarks to the bill as it is before you—what is known as the committee print—I want to say on behalf of the committee I represent (which represents the carriers east of the Mississippi River) and our special committee dealing with these matters (which is composed of traffic officers and several counsel) that this form of bill has not come to our attention as a committee at all, and it was only last Saturday that we learned of the draft and that the consideration of this matter was contemplated on this day. That applies to my office officially and to all my legal members, or all that I could reach. We did our best to get our committee and counsel

together, and to get them here. Mr. Brownell, who has been the principal counsel in this connection, was in Albany on legal matters before the Public Service Commission. Mr. Russell, of Detroit, was detained in court. Mr. Patterson, of the Pennsylvania road, is also detained in Philadelphia; and it was simply impossible to get any of the legal members of our committee here to-day to discuss the legal side of this proposition. I am not a lawyer, and I do not profess to undertake that.

I might say that there are some things, from a practical view point—I have looked over the bill as it came to us in this form yesterday—that do not seem workable. While uniformity is a good thing, it seems rather out of place to undertake to prescribe the form of paper which is to serve as a bill of lading—that is, as to the size of it. We are very insistent, as far as we can be, and have tried very hard throughout these nogotiations to get uniformity, and I want to make it clear to the committee that one of the strong objections that came to us from the shippers' organization was that it would be a great hardship if they were asked to comply with the size prescribed for the straight bill of lading.

Mr. BARTLETT. May I ask the gentleman a question?

The CHAIRMAN. Certainly.

Mr. BARTLETT. I want to ask this question. The railroads and the railroad commission have about agreed upon a form of bill of lading that will somewhat meet the conditions, have they not, sir? The Interstate Commerce Commission and the railroads have about agreed upon a form of bill of lading already, have they not?

Mr. McCAIN. Oh, yes; that is the form that is before you to-day.

Mr. BARTLETT. I happened not to be here——

Mr. McCAIN. I will be glad to show you——

Mr. BARTLETT. I do not care about it.

Mr. McCAIN. I want the committee to have it.

Mr. BARTLETT. I am not on this subcommittee, but I am a member of the committee.

Mr. McCAIN. I want you to know what the bill of lading committee has done in the way of conforming to the requirements of the commission. There are our announcements and everything that went to the carriers [indicating].

Mr. BARTLETT. Well, that was merely preliminary to another question. As far as I am concerned, I was somewhat responsible, with the other members of the committee, for this bill not passing in the original form in which it was introduced, because I did not agree to it; nor do I yet agree to this one. What I want to know is, would it be satisfactory if Congress should say that whenever the railroads and the carriers and the railroad commission agree upon a bill of lading, that that should be the bill of lading to control. In other words, if the sanction of Congress were given to the bill of lading that you have agreed upon or to any changes that you might adopt, would not that be satisfactory to the railroads?

Mr. McCAIN. In other words, if Congress gave its sanction to this bill of lading which had been mutually agreed upon between the carriers, shippers, bankers, and Interstate Commerce Commission, if you please, would that be the lawful and final bill of lading?

Mr. BARTLETT. Well, what I want to know is this. I do not know whether you would recognize this in court or not. It is simply the

agreement that you have had. If Congress were to give its sanction to this, or to authorize the commission, with the consent of the railroads, to change the bill of lading when it became necessary, do you not think that that would remedy the situation?

Mr. McCain. If you will pardon me, sir, from the practical workings of the bill of lading, it would seem that the bill of lading brought out under that arrangement ought to be satisfactory to all those interests.

Mr. Bartlett. That is what I was trying to get at.

Mr. McCain. But whether Congress can prescribe that that kind of a bill of lading is a contract which those interests must accept and be governed by seems to me goes into a legal phase which I am probably not competent to discuss.

Mr. Bartlett. They have prescribed already what a certain kind of bill of lading shall contain.

Mr. McCain. You mean in the act to regulate commerce?

Mr. Bartlett. Yes.

Mr. McCain. They have prescribed that the commission shall issue a bill of lading, this bill of lading as you have it here to-day. I think you appreciate that recommendation from the Interstate Commerce Commission, as being in their judgment the best form of bill of lading, meeting all the requirements of interstate traffic.

Mr. Bartlett. I am not much of a pro-railroad man, and I am not an antirailroad man, but for the bankers to seek to make the railroads responsible for somebody else's fault, or to make the railroad an insurer of all bills of lading, never struck me as being a very feasible or proper proposition.

Mr. Lovering. You mean that the railroad should not be made responsible for the agent's acts.

Mr. Bartlett. When the agent exceeds his authority; no. In other words, I would not make the railroad responsible for a bill of lading issued by the road when the agent had not received the property—never.

Mr. McCain. You have suggested something which occurs to me, on the practical side of this matter. As I recall the bill, it reads, generally, that no bill of lading shall be issued without the railroad having received the property. From the practical working of railway matters, that would be an upheaval, so far as facilitating the movement of commerce is concerned. I am not clear as to how it could be worked out, if that were required. There are thousands of bills of lading issued where the issuing carrier never sees the property, and can not see it in the natural course of business. Thousands of bills of lading are issued by the roads leading eastward from Chicago, based on a receipt or some other kind of form of bill of lading, sent to them, mailed to them, or phoned to them by the western roads. Take, for example, the Chicago Northwestern. Suppose it has ten cars of flour coming from Red Wing, Minn. The bill of lading or receipt is sent to the office of the road east of Chicago over which the traffic is routed. On the basis of that bill of lading the bill of lading of the eastern company is issued. That eastern carrier never sees that freight. It may not get to them in five days, a week, or ten days.

In other instances, manufacturers are located at small places, suburban places. They are reputable concerns, shipping four or

five cars a day, concerns so large that thay have been furnished with sidings. They call upon the carrier in town and say, "We want four cars sent in to-night or to-morrow morning for loading." The cars are sent in and they are loaded. The contents, destination, name of shipper, etc., may be phoned to the general office or to the nearest station office in the town adjacent to that. The bill of lading is issued and sent to the man, or it might be mailed. He gets it in the morning.

Mr. LOVERING. Are you speaking now of an order bill of lading?

Mr. McCAIN. Yes; an order bill of lading would apply in that case, to be sent to that man. He is a reputable manufacturer. The issuing officer of the road issuing the bill of lading never sees the freight. He takes the word of reputable manufacturers that those cars are loaded. Of course, the records will show the following day that the cars were moved; but if you change some of those methods it is going to revolutionize the methods of the carriers, and I should say it would give inconvenience to shippers.

Mr. BARTLETT. May I ask another question?

The CHAIRMAN. Certainly.

Mr. BARTLETT. The seventh section reads:

> That any material alteration, addition, or erasure in or to an order bill of lading or a straight bill of lading, fraudulent or otherwise, shall be without effect and in the hands of a bona fide holder, etc.

In other words, a change might be fraudulently made by a person who desired to borrow money on the bill of lading from a bank. He makes it, and it is a forgery. The railroad knows nothing about it. It would be just like a man signing my name to a note and going to the bank and discounting it. This bill would make it binding upon the railroad.

Professor WILLISTON. Only in the original form.

The CHAIRMAN. Only in the original form—not as to alterations.

Mr. BARTLETT. Well, it makes the railroad responsible.

Mr. McCAIN. We cover, Mr. Chairman, in our alteration clause of our old bill of lading all that was regarded as necessary between the shippers and the carriers to meet that feature. It reads:

> Any alteration, addition, or erasure in this bill of lading, which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect; and this bill of lading shall be enforceable according to its original tenor.

The CHAIRMAN. Mr. McCain, will you continue to address yourself to the proposition that it would be impracticable to operate under a provision which made the railroads responsible for a fictitious bill of lading—that is to say, where goods have not been received, and a bill of lading has been issued—showing the impracticability, if you can show it? That, I think, is the real pivot of this bill.

Mr. McCAIN. I wanted to make my position clear at the outset, that I wanted to touch briefly upon what our committee was, how it was constituted, and all about it, and what had been done, and especially to make the point that we feel that sufficient opportunity has not been given to get this new bill of lading into working effect. We think the time is not opportune to come here for legislation of this sort, when the new bills and the new requirements under those bills have really not got into working shape.

The other thing that I wish particularly to say is that as no opportunity has arisen for any consideration of this bill by the committee which made the present bill of lading, I am requested to ask for some little further time, and for an opportunity for those interests to appear. As I say, the information that it was the intention to have a hearing to-day only came to us Saturday, and I do not think that any of the members, either the traffic officers or the lawyers associated on the carriers' committee, who were in negotiation with the commission throughout all these arrangements, knew anything of the further hearing.

As to the point you raise, I personally do not feel quite competent to discuss it. That is more of a legal matter, which I would rather leave to the lawyers of our committee.

The CHAIRMAN. There are two or three things that you do know about, as to which I would like to inquire. First, in framing these conditions that are issued by the Interstate Commerce Commission, by agreement of all those interested parties, was this provision discussed concerning the obligation of the carriers to be responsible for a fictitious bill of lading? Was that insisted upon by the bankers or the shippers, and discussed by you, representing the carriers?

Mr. MCCAIN. I do not recall, Mr. Chairman, really. I can not for the moment recall that that was a matter of discussion, so far as the discussions took place looking to formulating these conditions on the bill of lading. It may have been brought out by the bankers; and while the carriers, and I think the commission have felt that in the completion of this contract and conditions the bankers were generally satisfied, they have felt that they would want some such legislation as they are asking for here now.

The CHAIRMAN. Do you know whether it was suggested to the commission that such a condition ought to be placed among these other conditions?

Mr. MCCAIN. I do not remember that it was; no, sir. I said I do not recall; if it was, it was at one of the public hearings. It may have been, but I do not recall.

The CHAIRMAN. In your experience as a traffic man have many cases been brought to your attention of losses occurring to shippers on account of the issuance of fictitious bills of lading by railroad companies?

Mr. MCCAIN. No, sir. I might say that in the ordinary course of business those would not come to me. That might come to the attention of individual roads and not come to my attention, I being in charge of the association, where those things would not come. They would naturally go to the road.

The CHAIRMAN. Naturally.

Mr. MCCAIN. I have not that information; no, sir.

The CHAIRMAN. I thought you would know something about the ordinary course of business.

Mr. MCCAIN. Any unusual occurrences of that sort I would be quite likely to hear of. There are two or three instances mentioned in this pamphlet, I notice, but I want to make the point—and I think I am right, and if not the bankers can correct me—that these instances cited here of money losses occurred before the new bill of lading was in effect.

The CHAIRMAN. Do you think that under the operation of these bills of lading, as promulgated by the commission, that they would make any difference as to the issuance of fictitious bills of lading, either by fraud or by mistake?

Mr. McCAIN. I think they go a great way toward preventing mistakes. I do not know what to say as to the issuance of a fraudulent bill. If a man were disposed to issue a fraudulent bill, he would do it, probably, no matter what kind of form we used; but so far as the misuse of bills by reason of mistakes is concerned by incompetent agents, etc., we believe that with the forms that we now have, and the very explicit instructions that went with them, together with the instructions that were issued by the carriers themselves (each carrier issued its own instructions, and some of them were very thorough), the opportunity for misuse of the bills has been very much lessened. And we also believe that the agent at small places has been greatly impressed as to the necessity of safeguarding those yellow bills of lading, and therefore, if you please, impressed morally with the fact that there is more danger than ever if he were disposed to handle them fraudulently. We think it has done a great deal to educate the smaller agents all over the country, particularly in our territory. I should say that the agent who heretofore might have been disposed to do that sort of thing will feel that he is under surveillance now, by reason of these new forms, with the instructions that have been given.

The CHAIRMAN. Now, these forms that you have given us to-day, when they are issued by the commission, apply only to the official classification territory. What has been done toward extending them to other territory?

Mr. McCAIN. The roads west of Chicago, leading to the Pacific coast, west and northwest, we understand, put the new form into effect on January 1. Certain roads in the south have individually adopted the new form, although no action has been taken jointly, through their association. I understand that they have a committee in one of their associations which is giving attention to the adoption of this bill, but they will probably find it necessary, as was understood at the outset, to make some modifications in certain of the conditions with respect to the traffic that is peculiar to their locality, such as cotton. It was understood that something a little different in the way of conditions might be made in that respect; but that is my understanding of the matter to-day. The western roads have adopted the bill, and the roads throughout the entire territory east of the Mississippi River and north of the Potomac have it in use, and practically all the shippers throughout that section, who print their own forms of receipts and bills of lading, are making use of it. My office has answered thousands of letters, and we have had hundreds of calls, showing a great interest on the part of the shippers, and we have helped them in innumerable cases to get their forms in shape. So the matter is just about getting to a point where it is being well understood by the shippers and the carriers.

The CHAIRMAN. Do you know whether there have been more complaints to the shippers in your territory in the East, and especially around New York, concerning the issuance of fictitious bills of lading within your territory, or within the southern territory, or within the

western territory? Has there been any difference that has come to your attention——

Mr. McCain. A difference——

The Chairman. As to the number of complaints concerning the issuance of fictitious bills of lading?

Mr. McCain. No. I want to make myself clear—that I still say those matters would not necessarily come to my attention.

The Chairman. I know that.

Mr. McCain. For I do not hear of them at all. I do not hear of any fictitious bills of lading.

The Chairman. You do not hear of them, whether or not they exist?

Mr. McCain. No, sir. If an unusual occurrence of that sort arose and the amount involved was large, and it transpired that two or three roads had been imposed upon at the same time, it might then come into my office, as a matter of joint discussion; but as an individual matter I would not necessarily hear of it. That is, as an individual matter of the roads. We do hear a good deal about claims in one form or another; but there has been no instance brought to my attention of any fictitious bills since I have been in the New York office, at least. I should say, and I think it must be apparent to you, that even the amount of money stated in this pamphlet, where certain instances are cited, was hardly anything compared to the volume of the business.

The Chairman. Well, now, suppose that in the section of the country where I come from, the central Northwest, the wheat country, the bankers should take the position that they would no longer discount or advance money on the credit of bills of lading unless there were some provision made by law by which the carriers should be responsible for the issuance of fictitious bills of lading; and that if such a position was taken by the financial interests it would greatly impede or imperil the movement of products in that section of the country. What would you say to that?

Mr. McCain. I do not think it would, sir.

The Chairman. You do not think it would make any difference?

Mr. McCain. I think, at first, it would be a rather radical change from their methods of doing business.

The Chairman. Supposing further——

Mr. McCain. I think Mr. Shipper of grain would find some other method of financing his business, rather than by using the railroads for that purpose.

The Chairman. Supposing the railroads of that section of the country should inform us that they would have no objection to such a provision of law and no objection to assuming such a liability. What would you say to that?

Mr. McCain. You are getting back again to asking my views on the question as to whether the carrier should be liable for the agent's acts.

The Chairman. That is what I want to know.

Mr. Bartlett. You do not mean that. You mean whether the carrier should be liable for the agent's act when the agent acts beyond his authority.

Mr. McCain. I still must be consistent with my first statement, that that is a legal question, and I would rather have it discussed by

our legal fraternity. That is a direct legal proposition, and I do not know that my personal views would be of any value.

The CHAIRMAN. You have had a great deal of traffic experience. What we want to get is information, from any of you gentlemen who feel that you would like to give it to the committee.

Mr. FAULKNER. Mr. Chairman, Mr. Berwin has been connected somewhat with this committee, and if he has anything to say I would suggest that he make a statement now to the committee.

STATEMENT OF MR. A. P. BERWIN, ASSISTANT COUNSEL PENNSYLVANIA LINES WEST OF PITTSBURG.

Mr. BERWIN. Mr. Chairman and gentlemen, as I only had an opportunity to see this proposed bill last evening for a few minutes, just before I was taking the train to come from Pittsburg, and to read over the report of the former hearing, I certainly feel at a great disadvantage in attempting to say anything here that would tend to enlighten this committee on the subject before it, or to even speak intelligently on the provisions of this proposed bill. But recalling as I do the long-continued efforts, extending over a period of four years, made by the shippers of what is known as the Central Freight Association territory and the traffic managers and a number of the executive officers of the several carriers in that territory; recalling in the first place the bitter feeling that existed four or five years ago when we first met together in Chicago on the petition of the shippers to the Interstate Commerce Commission, and the intense lines on which that hearing was conducted at first, and the subsequent negotiations which, at the instance of the Interstate Commerce Commission, the shippers and the carriers had, extending clear from Chicago to the seaboard, at all those different places, and over a period of between four and five years; and the fact that finally they did, in a spirit of concession and conciliation, reach a result which, while it was not possibly ideal, yet was mutually satisfactory to these representative shippers and to the railroad companies; and considering, too, the fact that during those negotiations between the shippers and the carriers we had the benefit of the advice of the bankers who, I believe, are represented here to-day, and a statement of what they were anxious for, and what they really felt they must insist upon in the bill of lading—I say, recalling all that, I do feel that this bill of lading, which was so mutually satisfactory and which received the approval of the Interstate Commerce Commission, ought to have a little time in which to test its efficiency.

It really has had only a month or two in which to go into operation; and now to be met here with a bill which is very drastic in its provisions, which penalizes heavily certain acts which, from the casual glance which I say I had of the bill, would seem to me to be impossible on the part of the railroad companies to prevent or to change, would be absolutely unnecessary. So, as I say, for the reason that this proposed bill of lading has not yet had a sufficient time in which to be properly tested, and for the further reason that traffic men have not had an opportunity to express their views, it would seem as though this were a time and this a case in which haste should be made slowly.

As I recall it, the bankers chiefly asked and most strenuously urged on the committee of the shippers and carriers two things: First, that there should be a separate bill of lading; that their interests required the railroad company to issue an order bill of lading which was entirely different in its character from the bill on straight consignments. That the railroads have acceded to, although it involved a great deal of expense in preparing bills and a great deal of expense in putting them into operation. They felt that it was only fair to the bankers, and therefore they were willing to do it, and they did it, and it is going, as far as we can see, to work out very well. The second thing they asked for was what has been referred to by the honorable chairman and spoken of by my friend, Mr. McCain, that an alteration should not at common law vitiate the whole bill of lading, but that the original bill should be in force and effect according to its original tenor; and that suggestion on the part of the bankers the carriers promptly acceded to.

Now, while this bill might, as I view it, properly have been brought before the House and referred to this committee a year ago, it does seem as though it is not one which should be enacted at the present time. If, therefore, as I say, your committee could give us a little more time and a little better opportunity to give you the views of our traffic men on the several practical questions embodied in this bill, I am sure it would tend to your enlightenment.

Mr. Russell. What do you understand to be the material differences between the form of the order bill as provided for in this committee print and the bill of lading which you say the various parties in interest have agreed on, and which you want to see tested further?

Mr. Berwin. As I say, I only had an opportunity to read this over last night before stepping on the car. I did not even have a copy with me; but I know, if I remember it correctly, that this bill makes it absolutely the duty, under penalty, for a railroad company to issue an order bill of lading of a particular color and of a particular size. So far as the form itself is concerned, I do not know that there is any material difference.

Mr. Russell. This, I believe, is the order bill of lading as agreed upon between the parties, you say, at conferences, and which you now want to see tested further [indicating]?

Mr. Berwin. Yes. That has a provision in it, if you will notice, that property which is shipped on an order bill shall not be delivered without the surrender of the bill of lading. That is what we have agreed to, and what we are going to be bound by. We are responsible for any loss by reason of any violation of that, but here any violation of that is made a penitentiary offense. I can not see how the interests of the bankers would be safeguarded any better by attaching such a penalty to a violation of the act than they would be by making the railroads responsible, which they are now.

Mr. Russell. I do not think you fully understood my question.

Mr. Berwin. Possibly not.

Mr. Russell. It is this: What material difference, if any, do you know to exist between this form of bill of lading—the form of it; not the penalty for violation of it, but just the form of it—and the one provided for in this committee print?

Mr. Berwin. I do not know that there is any difference.

Mr. RUSSELL. Do you know of any material difference between the form of the straight bill of lading agreed upon at the same time and the form specified in the committee print?

Mr. BERWIN. If my memory serves me properly, there is no material difference. That bill does not contain all the conditions. It merely says that each of the bills shall have certain characteristics.

Mr. RUSSELL. What you object to, then, is that the committee bill, after declaring the forms which are practically equivalent to these forms here, is attempting to proceed further and penalize the violation of those forms.

Mr. BERWIN. It goes further than that, as I recall—very much further than that. Of course there are differences over and above and beyond what you mention there as to the form of the bill. There are liabilities on the railroad company, which are provided in the bill——

Mr. RUSSELL. Let us see about that. In describing the requisites of an order bill of lading it is provided:

> In connection with the name of the person to whose order the property is deliverable the words "order of" shall prominently appear in print on the face of the bill, thus: "Consigned to order of."

You have that in this form here, have you?

Mr. BERWIN. We certainly have.

Mr. RUSSELL. "The bill shall be printed on yellow paper, 8½ inches wide by 11 inches long."

That practically conforms to it.

Mr. BERWIN. Let me say that as a rule the carriers have all agreed that while the width should be 8½ inches, the length is not so material. Of course they want to get uniformity; but in that respect it is not considered absolutely essential.

Mr. RUSSELL. Taking the various requisites that the committee print provides for the order bill of lading, which you see designated (a), (b), (c), (d), and (e), does not this form that you have adopted practically contain every one of them?

Mr. BERWIN. Yes.

Mr. RUSSELL. And when you come to the straight bill of lading, does not your straight bill of lading contain practically all of the requisites provided for in this committee bill?

Mr. BERWIN. So far as I can see, it does.

Mr. RUSSELL. Then the contention between you gentlemen is that while you are willing to issue a bill of lading under these forms, yet you object to a legislative declaration as to what the consequences of violation shall be. Is not that it?

Mr. BERWIN. That; and there are also other provisions here. For instance, section 4. I think we are responsible for a violation of the conditions there. If we deliver the property on an order bill of lading without demanding the bill of lading, we are responsible, and we have so expressed it.

The CHAIRMAN. You say you are responsible for the violation?

Mr. BERWIN. Certainly; for the violation of every one of the conditions.

Mr. RUSSELL. You object, however, to the carrier being made liable for the issuance of a bill of lading when the property described in it has not been received at all.

Mr. BERWIN. That is one of the points.
Mr. RUSSELL. Why?
Mr. BERWIN. I am not prepared to argue that this morning, as I say.
Mr. BARTLETT. It strikes me that a very good reason why is because the contract with the railroad is a contract of freight carrying and not one of guarantee.
Mr. BERWIN. That is a very succinct statement of it, but I would not be prepared to make a legal argument, citing authorities, and to go into it fully, without more preparation.
Mr. RUSSELL. I would like to ask you one thing more about the committee bill before you sit down or before you take up another subject. I would like to direct your attention to page 4 of the committee bill, beginning at line 16:

And such issuing carrier shall be liable to any and every such person for all damages, immediate or consequential, which he or they may have sustained because of reliance upon such bill, whether the person or persons guilty of issuing or negotiating such bill shall have been convicted under this section or not.

That language is practically repeated, beginning with the word "and," at the bottom of page 5, with reference to the other section. What do you understand to be the legal effect of that?
Mr. BERWIN. It is hard to tell. The word "consequential" is very far-reaching. To what extent it might go I am not prepared to say. It is pretty broad.
Mr. RUSSELL. Would you draw any distinction in the language here between damages that were consequential and damages that were remote?
Mr. BERWIN. Well, possibly "consequential" is not as far-reaching as "remote."
Mr. RUSSELL. Is it more far-reaching than "immediate"?
Mr. BERWIN. I think it is.
Mr. RUSSELL. Would it include any damages except such as were the direct and natural consequences of the act complained of?
Mr. BERWIN. It is evidently an attempt to go further than that. Just how far it will reach I am not prepared to say. It was put in there for some purpose.
Mr. RUSSELL. I have no further questions.
Mr. FAULKNER. Mr. Chairman, Mr. Northrop is here, representing the Southern Railway Company, as assistant general counsel. He is familiar with matters in the southern territory, south of the Potomac and east of the Mississippi.
The CHAIRMAN. We will be glad to hear Mr. Northrop.

STATEMENT OF MR. CLAUDIAN B. NORTHROP, ASSISTANT GENERAL COUNSEL, SOUTHERN RAILWAY COMPANY.

Mr. NORTHROP. Mr. Chairman and gentlemen, the objections to this bill might be placed, it seems to me, under three heads: First, that it is inopportune, in view of the efforts that have been made for the last four or five years, and that are now being made to get one uniform bill of lading throughout the United States that will be satisfactory to every interest concerned. The second objection is that there are legal questions that go to the very foundation of the bill

itself. And third (and probably most important), there are the practical difficulties involved.

Taking up the first proposition:

As you gentlemen have been informed, there has been a great demand throughout the country for a uniform bill of lading, something that would simplify the immense commerce of this country. That demand has been made on the part of the shippers, bankers, railroads, and public generally, and a uniform bill of lading is a consummation devoutly to be wished.

For four years the roads in the trunk line territory struggled with this problem, and the Interstate Commerce Commission aided in an effort to bring about a uniform bill of lading. The instrument which you have before you there is a result of those efforts. There were many concessions made on all sides. This being a proposition that affects so many interests, it required an immense amount of negotiation and an immense amount of thought and study and care; and even then the bill of lading which was the result of those efforts was thought to be something which was only a step toward the greatly desired result. When the commission approved that bill of lading, it, in its formal opinion, stated that it recommended that it should be adopted as far as "practicable" throughout the country. The commission used that language "as far as practicable" because there are certain kinds of freight and certain territories where conditions are different from those in other territories. For instance, live stock is freight of such a different character from merchandise that there would have to be a different bill of lading for live stock.

In our territory in the South we have cotton. We also have the difficulties of quarantine; and we also have difficulties in regard to water transportation in connection with rail transportation; and to unify and make one a bill of lading that will cover all those problems, is indeed a herculean task. But it has been well begun, and the commission has approved this uniform bill of lading, and it has been adopted very largely throughout the United States.

We, in the South, under the auspices of the commission, and in consultation with the commission, are now about to put in a bill of lading which is more in conformity with the needs in our part of the country. It takes care of the quarantine; it takes care of the cotton; it takes care of water transportation. There are many lines in the South that begin at the Potomac River and Ohio River, and reach into the Southeast, and they, in connection with the water carriers extending to Boston, New York, and other points, form through lines into the South.

The CHAIRMAN. It has been suggested that I ask you if you have a copy of the bill of lading to which you refer?

Mr. NORTHROP. I have only the first rough draft. The copy we are about to put in is being printed, and I have not a copy of that. I will be glad to furnish it to the committee a little later.

Mr. PATON. Is that the Hayne bill?

Mr. NORTHROP. The Hayne bill; yes.

Mr. RUSSELL. You say you will furnish it to the committee?

Mr. NORTHROP. I will be very glad to do so. I have here one of the first drafts of that. I have a rough draft of the original proposition.

We consider that the bill of lading which we are about to put in in the South has features that really are improvements on the uniform bill of lading the Trunk Line territory has adopted, and other territory has adopted. It is the hope of the commission and of the carriers that sooner or later all the bills of lading will be consolidated into one general bill of lading throughout the country, if that can be done. We are very much in hope that it can be done. Of course there are peculiar sorts of traffic, and peculiar situations, so that we may never be able to get one paper that will be good for all the nine or ten thousand articles which constitute the traffic of the country. But as far as we can get that uniformity we are going to do it. As Mr. Justice Peckham, of the Supreme Court, on one occasion remarked in a tax case:

"Uniformity does not mean absolute mathematical uniformity, but uniformity and equality so far as the differing facts will permit and as near as they will permit, is all that can be aimed at or reached." (173 U. S., 205.)

Now, we have this bill in Congress here, presented at this moment when this great plan is being thought out by experts of the railroad, and expert shippers, expert bankers, and everybody, and by the commission itself; and not only have we got this bill, but bills similar to this have been introduced in the various States. In North Carolina an effort is being made to pass a bill very much like the one you have here. We have advices from South Carolina that a bill has also been introduced in the legislature of that State.

Now, the moment that every State begins to legislate about the forms of bills of lading, the color of the paper, and the different conditions that shall go into a bill of lading you are going to hamper the efforts of the Interstate Commerce Commission and the efforts of everybody concerned to get a uniform bill of lading, and the part of wisdom would be to let it go along while an honest effort is being made on the part of everybody to reach uniformity. The time is not ripe for legislation at this moment, in my humble judgment. I say that with very great respect; but it seems to me that would appeal to anyone who is familiar with the situation as it exists.

There are in this country hundreds of railroads, hundreds of boat lines, and hundreds of shippers. Each individual of them thinks he can draw a bill of lading better than anybody else, and it is very hard to get them together. The commission found that; the trunk line people found it; we find it. There have to be concessions among the railroads, among the shippers, and among the bankers and everybody else.

So much for that situation. I will now take up what seems to me a very important consideration that this committee and Congress ought to address itself to, and that is this: If you will read at your leisure the case of Shaw *v.* Merchants' National Bank of St. Louis (101 U. S., 557), you will find an opinion, delivered by Mr. Justice Strong, announcing the views of the United States Supreme Court. That opinion contains very concisely the law as to what is a bill of lading and what is a negotiable instrument. That is the great value of the decision, and it is a very important thing to arrive at a clear understanding as to the nature of a bill of lading and the nature of a bill of exchange. The Supreme Court there points out that negotiability in its correct and strict sense simply means that

a person who is not a party to a contract, some third person, may be allowed to sue on that contract in a court.

The court then goes on to point out that what are commonly and perhaps loosely called negotiable instruments, such as bank notes, bills of exchange, and papers of that character, have additional attributes, that have come, probably through popular misconception, to be regarded as the negotiable features of the promissory note and the bank note, or a bill of exchange. The court states that by virtue of the custom of merchants such intruments have the additional attributes of being just like money, or are actually money in the hands of a bona fide holder for value before maturity; and that in so far as they have those attributes they differ from bills of lading, and also differ from the law which assures the protection of other personal property. Anyone who comes into bona fide possession of a bank note can take it anywhere and hand good title over to a third person. If I take out of my pocket a bank note of the Metropolitan National Bank of Washington, anybody is safe in taking that note, because the law does not surround that particular character of paper with the protection which usually goes to personal property. If I go into a man's stable and take a horse, which is a piece of personal property, and sell it to another man, and he sells it to a third man, and so on, the original owner of that horse can take it anywhere, from anybody, in spite of the bona fides of the successive transactions. It is only to money, bank notes, bills of exchange, and promissory notes which the law gives that particular characteristic.

The Supreme Court says that a bill of lading is a symbol of property. That is all. It is, of course, a receipt and a contract for carriage, but it is a symbol of property; and that it ought not and can not be converted into a bill of exchange.

For instance, if a thief sells the cotton represented by a bill of lading, nobody would get title to that cotton, even though the purchase be in good faith. You could not pass it on from hand to hand as you could a bank note. No more should the bill of lading, which is merely the symbol of the property, be passed on from hand to hand without right of recovery by the true owner, because it would open the door to thievery, and would hurt not only the shipper and merchants, but also the banks.

In the case that was being discussed by the Supreme Court a bill of lading was issued by the bank, the Merchants' National Bank of St. Louis. They paid out money on it, and while that bill of lading was in transit somebody stole it and passed it over to a third person, who advanced some money on it. Then the third person came along and said, "I have the bill of lading, and it is a negotiable instrument. I want the property." The court said, "You will not be allowed to have the property even if you do hold the bill of lading. The bill of lading was stolen." They said the bank which originally discounted the draft and bill of lading was entitled to the property. And in this instance, if this proposed legislation had been on the statute books, that bank would have lost the money. So it seems to me that the bankers overlook those effects of converting a bill of lading into a certified check.

This bill in the first section, subdivision (d) reads that you shall not place upon a bill of lading the words "not negotiable," and that if those words are placed thereon, they are void.

Mr. PATON. That is, on an order bill.

Mr. NORTHROP. That is right—on an order bill of lading; and then in subdivision 2 of section 5 it says that whether the carrier receives the property or not it shall be responsible. Now, the plain object of that bill is to convert that bill of lading into a negotiable instrument, in the common understanding of the term, and make it pass from hand to hand, like a bank note or like a bill of exchange. The moment you do that, the moment that you make a bill of lading a negotiable instrument, you take it out of commerce; and you have no right to regulate anything except commerce under the interstate commerce clause of the Constitution.

The Supreme Court of the United States, in 8 Howard (p. 73) in the case of Nathan *v.* Louisiana, has decided that a bill of exchange or a bank note is not commerce. So when you are boiling this water, after you have made your bill and converted the bill of lading into a negotiable instrument, it all evaporates, you have converted a bill of lading into a bill of exchange, which is not commerce, and Congress has no power to regulate it at all, because it is not commerce, as the Supreme Court has said——

Mr. BARTLETT. It is a sort of an insurance receipt, then.

Mr. NORTHROP. Exactly. Alexander Hamilton said in one of his papers that bills of exchange and insurance policies would undoubtedly be commerce, and subject to the regulation of Congress; but the Supreme Court decided otherwise as to bills of exchange and contracts of insurance.

In Nathan *v.* Louisiana (8 How., 73) was a case in which the State taxed a dealer in bills of exchange. Friedlander *v.* Texas and Pacific Railroad (130 U. S., 416) was a case where an agent of the railroad company in Texas and a shipper got together and they issued a bill of lading for 200 bales of cotton which they did not have. I suppose they needed the money and they just issued it. It was sent on to Friedlander & Co., at New Orleans, and they advanced $8,000 on it, or something of that kind; and then, of course, when they found that there never was any cotton, they sued the railroad. The case went up to the Supreme Court of the United States, and among other things the Chief Justice says:

> Railroad companies are not dealers in bills of exchange nor in bills of lading, they are carriers only and held to rigid responsibility as such. (130 U. S., 416.)

This legislation would practically convert a railroad company into a bank—into a dealer in bills of exchange and bills of lading. We have no banking powers. Formerly they used to charter railroad companies and also give them banking powers. The chief justice in that case says that we are not dealers in bills of exchange.

Mr. BARTLETT. I doubt very much whether you could get that charter again in a State.

Mr. NORTHROP. They might give it to us again in this bill. It might be the means of converting us into a big bank, I suppose.

Mr. BARTLETT. The United States has no right to charter a bank to do business, except such as gives power to issue money, or to become a fiscal agent of the Government, etc.

Mr. NORTHROP. That is the case of McCullough *v.* Maryland.

Mr. BARTLETT. Yes.

The CHAIRMAN. As I read this bill it provides practically for an estoppel against your denying the effect of some of your acts. Does

that estoppel create a negotiable instrument where none existed originally?

Mr. NORTHROP. You will find in section 1 (d), and I suppose you must read the whole bill together——

The CHAIRMAN. Yes.

Mr. NORTHROP. "It shall not contain the words 'not negotiable' or words of similar import. If such words are placed on an order bill of lading, they shall be void and of no effect." Of course you must take the whole bill together, in all its sections, and I should think it would probably be open to the construction that bills of lading are made negotiable. The prohibition against putting the words "not negotiable" on an order bill of lading, coupled with the prohibition that railroads shall never be allowed to defend on the ground that no goods were ever received, has the effect of transforming the bill of lading into a negotiable instrument.

The CHAIRMAN. Take the whole bill together, and does it not result in this, that where the railroad company in performing its usual functions as a carrier issues a duplicate bill of lading for a single shipment or issues a bill of lading for a shipment of goods which have never actually been received it is estopped? In the first place it makes that act unlawful; in the second place, the railroad company is then estopped to deny its liability for damage accruing on account of the act. Does that fact create a negotiable instrument? Does the law that we attempt (if we should attempt to do it) to affix to that act create a negotiable instrument where none existed before? I can not see that it does.

Mr. NORTHROP. If you go back to that section and take them both together, section (d)——

The CHAIRMAN. I am calling your attention to the way your argument impresses me.

Mr. NORTHROP. Subdivision (d) reads:

It shall not contain the words "not negotiable" or words of similar import. If such words are placed on an order bill of lading, they shall be void and of no effect.

That language means something. By implication it means the bill of lading is made negotiable, and taken in connection with the section you have in mind it looks to me as if it would be open to the construction, necessarily, that the object of this act was to convert a bill of lading into a negotiable instrument, like a bill of exchange, against which there could be no defense set up in the hands of a bona fide holder. The words "good faith" and "for value" appear throughout the bill. True it does not say "before maturity," as the court points out in this case that I have cited. The incongruity of the attempt is thus manifest. The difficulty in converting a bill of lading into a certified check is very great, but it seems to me that if it is possible to be done this bill does it.

The CHAIRMAN. But suppose it does not do it, would you be estopped to deny responsibility for damage for the act of your agent?

Mr. NORTHROP. I beg your pardon.

The CHAIRMAN. Suppose we do not try to do that, and that we guard against converting it into a negotiable instrument, but do try to create an obligation upon you of estoppel for damages resulting from the acts of your agent?

Mr. NORTHROP. For goods that have never been received?

The CHAIRMAN. Yes.

Mr. NORTHROP. In orther words, if you strike out all the language, which may have the effect we are speaking about now, about converting it into a negotiable instrument?

The CHAIRMAN. Yes.

Mr. NORTHROP. And merely frame a bill such as they have in some of the States, providing that the railroad company shall be responsible for goods that are never received? You want some views on that particular point?

The CHAIRMAN. I would like to know how that would work out.

Mr. RUSSELL. And if we should make the bill subject to the conditions you have just stated, would it be such a bill as we would not have power to enact here because it would not be in the regulation of commerce?

Mr. NORTHROP. Of course, when all is said and done, the essentials of a bill of exchange, or of a bank note, simply consist in cutting off a great many defenses which otherwise could be made; that is to say, when that instrument gets into the hands of a bona fide holder for value before maturity. Of course, after maturity you can make those defenses. Suppose you eliminate this language that seems to me, with all due respect, has the effect of making it negotiable, and try to draw a bill in such language as will simply confine it to that point. You are, in effect, then actually cutting off the defense and substantially transforming it into a negotiable instrument, it seems to me, and there is great danger in that. I would not give that as my final opinion without study. But you have got to deal with legislation, of course, just as the courts or any fair-minded person would, by looking to its necessary effect. If, instead of saying that a bill of lading is hereafter never to be marked "not negotiable," you say that a bill of lading shall not be subject to this defense or that defense or the other defense, and you name all the defenses that are precluded from being put up against a negotiable instrument, then you are really, in effect, converting it into a negotiable instrument. There are some laws in a number of the States right in the line the chairman mentions, but many of the States have held that those laws are not valid.

In this very Shaw case that I have spoken of, there was a law in Missouri that was under discussion in that case, and there was also a law in Pennsylvania. The Supreme Court held that it was impossible; that there was no power under the charter of a carrier to carry on transportation until the goods were received. As the Chief Justice says:

"The receipt of the goods" (quoting Mr. Justice Miller), said Mr. Justice Miller, in Pollard *v.* Vinton, supra, "lies at the foundation of the contract to carry and deliver. If no goods are actually received, there can be no valid contract to carry or to deliver."

He cites that in 130 United States, 416.

Now, we are strictly carriers under our charter. We are not bankers, as the court goes on to say "Railroad companies are not dealers in bills of exchange, nor in bills of lading." We have no power to make a contract to carry goods until we get them. That is what the court says. Now, we have no power, and it is inherently impossible to confer power to carry goods until you get them; in other words, you can not eat any bread until you have the bread.

The CHAIRMAN. I want to say that I raised that point the very first time my banker friends appeared, and I urged it as strongly as

you are urging it now; but I have been converted on this proposition. If in the course of doing your usual business, in having certain agents do certain things, by mistake or otherwise, you do issue a bill of lading on goods that may not have been actually received at the time, have we not power to punish that act if you do that and affix certain liabilities on that act if you do it, under our power to regulate commerce?

Mr. NORTHROP. You have the power to punish all sorts of crimes, I suppose. If we issue it within the scope of our power and authority, then we are liable; but the Chief Justice meets that very question here. The Supreme Court says it is impossible to be within the scope of our power. I will read the whole passage. I do not like to consume the time of the committee——

The CHAIRMAN. Go ahead. I assume that you do not care to occupy very much more time, Senator.

Mr. FAULKNER. Well, sir, we have not gotten through yet.

The CHAIRMAN. I want to give you all the time you desire. Would you prefer to go on for a few minutes more, or to adjourn, say, until 2 o'clock?

Mr. NORTHROP. Suppose you let me read this passage in answer to your question. I think that the question you have in mind was the one that was in the court's mind:

"The receipt of the goods," said Mr. Justice Miller, in Pollard *v.* Vinton, supra, "lies at the foundation of the contract to carry and deliver. If no goods are actually received, there can be no valid contract to carry or to deliver." "And the doctrine is applicable to transportation contracts made in that form by railway companies and other carriers by land, as well as carriers by sea," as was said by Mr. Justice Matthews, in Iron Mountain Railway *v.* Knight (122 U. S., 79, 87; 30, 1077, 1080), he adding also: "If Potter (the agent) had never delivered to the plaintiff in error any cotton at all to make good the 525 bales called for by the bills of lading, it is clear that the plaintiff in error would not be liable for the deficiency. This is well established by the cases of The Freeman *v.* Buckingham (59 U. S., 18 How., 182; 15, 341) and Pollard *v.* Vinton (105 U. S., 7; 26, 998).

It is a familiar principle of law that where one of two innocent parties must suffer by the fraud of another, the loss should fall upon him who enabled such third person to commit the fraud. But nothing that the railroad company did or omitted to do can be properly said to have enabled Lahnstein to impose upon Friedlander & Co. The company not only did not authorize Easton to sign fictitious bills of lading, but it did not assume authority itself to issue such documents except upon the delivery of the merchandise. Easton was not the company's agent in the transaction, for there was nothing upon which the agency could act. *Railroad companies are not dealers in bills of exchange, nor in bills of lading; they are carriers only, and held to rigid responsibility as such.* Easton, disregarding the object for which he was employed, and not intending by his act to execute it, but wholly for a purpose of his own and of Lahnstein, became *particeps criminis* with the latter in the commission of the fraud upon Friedlander & Co., and it would be going too far to hold the company, under such circumstances, estopped from denying that it had clothed this agent with apparent authority to *do an act so utterly outside the scope of his employment and of its own business.* (Friedlander *v.* T. & P. Ry. Co., 130 U. S., 416.)

Italics mine.

Now, he says there, you see, that we are confined to our charter powers as a common carrier. We can not go into any other line of business. The Supreme Court lately has set aside a contract for coal because it said that it practically made railroads sellers of coal while the policy of the law is to comfine then strictly to transportation only. (I. C. C. *v.* C. & O. R. R., 200 U. S., 361.) Now an act of Congress says that we can not even own coal lands. The policy of the country to-day is more and more to confine us to our duties as carriers only.

The CHAIRMAN. You can own lands for the purpose of running your railroad.

Mr. NORTHROP. I am talking about the policy of the country, that it is more and more in line with the Supreme Court decision, that a common carrier must be a common carrier and not a dealer in goods. But how can it be a common carrier unless it has something to carry?

The CHAIRMAN. That is true as a general proposition.

Mr. NORTHROP. Of course there is no need for me to argue to you gentlemen that as to a charter to run a bank, or a charter to run a hotel, or a charter to run a grocery, or to run something else, that unless we have those powers we can not exercise them. We can not authorize our agent to exercise them. We can not carry sometning unless we have it to carry. That is the view of the Supreme Court. There have been States where they have talked about estoppel, about this, that, and the other, and judgment has been given on that proposition; but I, myself, feel that the Supreme Court of the United States has unanswerably settled any such fallacy as that; and probably it is a better policy to confine the railroad companies to their charter powers.

Mr. RUSSELL. I understand that the right to regulate commerce is really the right to prescribe rules under which it is to be conducted.

Mr. NORTHROP. So the courts say.

Mr. RUSSELL. That is about the definition of the Supreme Court. Concede, for the sake of argument, that this bill is an attempt to prescribe a rule under which interstate commerce shall be conducted. If that be true, would the mere fact that incidentally in attempting to prescribe those rules it makes a bill of lading a negotiable instrument, would that destroy the capacity of Congress to regulate along that line?

Mr. NORTHROP. Well, the power to regulate commerce is a direct constitutional grant to the United States Government, and that means to prescribe rules upon which that commerce shall be conducted. There are certain things which do not constitute commerce. The Supreme Court has held that manufacture precedes commerce; that sale precedes commerce; that the cab service of the Pennsylvania road in New York City precedes interstate commerce, although you are going on an interstate journey. They have held that there are certain incidents of commerce, like an insurance policy or a bill of exchange, that do not constitute commerce. You will not find anywhere in the Constitution of the United States the slightest scintilla of direct authority for Congress to make a rate on interstate commerce—not one. But, as incidental to the protection of interstate commerce, the exercise of the police power for the protection of interstate commerce, the rate-making power is probably vested in Congress; but that is the ground.

Now, how far can you carry those incidents? Can you graft one incident upon another ad infinitum? You have to stop somewhere. The making of rules for transportation, the act of hauling the goods, the intercourse, the movement of merchandise and freights, is commerce, which you can regulate and which you can safeguard to prevent extortion and to protect the public generally, as an incidental police power. Of course you are familiar with the cases which say that the Government has no inherent police power, but that it has incidental police power to carry out any great constitutional grant of

power; but those incidents do not run into infinity. If you were to convert this bill of lading into a negotiable instrument, I doubt very seriously whether it would be valid legislation on that ground. It is a thing that ought to be considered very carefully. It is a serious question, and you should go slowly. Here is the very foundation instrument of the commerce of this country, the bill of lading. It is just as important as the rails, just as important as the cars and everything else. If you are going to get a good, substantial, effective bill of lading, you should take time. Legislation should not be so framed as to be full of risky legal questions. Such things are not for the good of the railroads, of the public, or of any particular interest. We should not hurry this matter through.

Answering your question frankly, I say if you convert the bill of lading into a negotiable instrument your water evaporates in the boiling.

A GENTLEMAN. In that St. Louis case that you spoke of, was that an order bill of lading?

Mr. NORTHROP. I do not know; but it was a bill of lading that the bank advanced money on, and somebody stole it. The bank would have lost if the bill of lading had been what you gentlemen want to make it. The bank would have lost the money.

The chairman said something a little while ago about adjourning, and I do not want to trespass on your time; but I do want to reach that third subdivision of this topic—that is, as to the practical side of it.

The CHAIRMAN. We want to hear you on that. We would like to conclnde the hearing to-day, Senator. How much more time will you need?

Mr. FAULKNER. I am a little embarrassed about Mr. Paulding, who represents the New York Central and Hudson River Railroad. He has an engagement to appear before the Appropriations Committee of the House on a very important matter at 2 o'clock.

The CHAIRMAN. Would he like to address us now?

Mr. FAULKNER. That is for Mr. Paulding to say.

Mr. CHARLES C. PAULDING. Mr. Chairman, I am solicitor for the New York Central and Hudson River Railroad Company. I would like to be heard before the committee quite fully, but I would, before that, ask, as Mr. McCain has asked this morning, that some members of the uniform bill of lading committee might be heard before this committee. Those gentlemen had in hand the entire practical preparation of the uniform bill of lading, and the presentation of it before the Interstate Commerce Commission, and the negotiations with the shippers and banks and other interests which were represented. Further, at the last meeting of the committee, last Wednesday, I said to you, if you will recall, Mr. Chairman, that our general traffic manager wished to be heard upon this question on the practical bearings of this bill. I was very much engaged here last week in matters not only before the committee but before the Interstate Commerce Commission. I have been in New York but one day since the last meeting of the committee, but I communicated with Mr. Mitchell and had a short talk with him Monday morning. His engagements made it impossible for him to be here to-day, although I assumed last week that he would be here.

Mr. McCain has represented the trunk lines, of which our line is one, this morning so far as he could. I ask, however, that I may have an opportunity to be specifically represented by the general traffic manager of our line, and possibly of some other lines. I think Senator Faulkner knows of some others who could not get here to-day.

A GENTLEMAN. Speaking for the Pennsylvania Railroad, I should like to have that company represented by Mr. Dixon, our general traffic manager.

Mr. BERWIN. I would like very much, on behalf of the Pennsylvania lines, to have the fourth vice-president and the freight traffic manager present their views on the bill from the traffic standpoint.

Mr. McCAIN. I want to be sure that you understand, Mr. Chairman, whom I ask shall be heard. Our bill of lading committee is composed of traffic officers, some of the gentlemen whose names have been mentioned, and counsel; Mr. Brownell, of the Erie; Mr. George Stewart Patterson, of the Pennsylvania Railroad; Mr. Farnum, of the New York, New Haven and Hartford Railroad; and Judge Russell, of Detroit, representing the Michigan Central. Those gentlemen, and the several traffic managers that have been mentioned, and one or two others that I do not think of at present, I think should be heard; but I want to especially ask that the opportunity be afforded counsel of our committee, whom I have named, to appear before you and discuss these matters.

The other gentlemen have referred to traffic people who might enlighten you on some of the practical matters; but you have entered here into some discussion of some very important legal matters. Some of them have been more or less discussed in the negotiations that were conducted in connection with the bill of lading, and counsel surely should have an opportunity to be heard. As I have said to you, Mr. Brownell, Mr. Patterson, and the others whom I communicated with on Saturday and Monday did not know anything about this last hearing, the one before, and did not know anything about this hearing to-day, and could not be prepared to come here.

The CHAIRMAN. Does any other gentleman representing the railroads wish to ask for any further hearing?

Mr. FAULKNER. Mr. Chairman, you know from your experience of my course before the committee that I never talk unless I have to. If I can get anyone to talk for me who, I think, is more competent to lay information before the committee, I always bring them forward and stay in the background myself. Of course I am listening to this whole discussion. I have my own views as to the practical part of the matter, and some views with respect to the bill; and if I find that they are not covered by the committee here I will ask for a short time for myself; but outside of the gentlemen who have been named already, who are very anxious to have an opportunity to appear before the committee, I know of no one else.

The CHAIRMAN. Professor, did you wish to say something?

Professor WILLISTON. It was merely in regard to this question of time. Of course it is very unpleasant for a lawyer ever to object to any question being heard in the fullest possible way; but we are confronted with the knowledge or belief that unless this matter is closed up very soon here it will practically be dead for this year. We have been coming to Washington for three years in regard to

this matter, with the fullest knowledge of the railroad gentlemen. This bill is not the same as the bills that have been pressed upon the committee in the two preceding years, but it is not the same simply because it has had stricken from it a large number of propositions which for one reason or another we saw the committee deemed objectionable. Now, we do want, and want very much, to get this matter concluded this year. We want to achieve a result, if we can. We have always found, and it is natural that we should so find, that the railroad gentlemen are very busy. It is very hard to get them at a particular time, at a particular place, in large number—to get all that want to come. They have other duties. But I can not believe that the gentlemen who are here to-day are not able to present fully the considerations that must weigh with the committee here, both practical and legal. There are here gentlemen of large practical experience representing the railroads; there are gentlemen of the greatest legal ability. There is, therefore, no lack of a thorough hearing, and on that account I feel that I must urge the committee, if it will do so, to close the hearings promptly.

Mr. FAULKNER. Will the committee permit me a word in reply?

The CHAIRMAN. Certainly, Senator.

Mr. FAULKNER. Let us meet these questions in perfect fairness. This is a business proposition in which these gentlemen are as much interested as we are. Any mistake in this bill of lading, by a statutory requirement, would be detrimental to the commerce of the country, and would be injurious to all who have relations with that subject. We all must, as practical business men, recognize that fact. Now, there are honestly believed to be serious objections to this bill. I want to say to the chairman and to this subcommittee that we supposed that this matter, after the action of the shippers and bankers and the Interstate Commerce Commission and the railroads, had gone over until a time when this bill of lading, this order bill of lading, should have had its opportunity to be worked out in a practical way, to see how it would affect the commerce of the country. As to all the conditions incident to both bills of lading, it was suggested by the commission (and a very wise suggestion it made, too) that even this bill which they recommended, they must be understood as simply recommending tentatively. Although four years had been consumed in reaching a conclusion upon the conditions attached to that bill of lading and the language employed upon the face of the bill of lading, yet even that commission, and all these experts that have been engaged in it, were unwilling to say to the country and to the shippers and to the railroads, "We approve fully of this bill." They say: "We can put it into operation, but it must be regarded as simply tentative; and when we see the workings, the practical workings of this bill of lading with the conditions attached to it, we hold it within our right, without any compulsion whatever, to make such recommendations as we may find in the practical workings of this bill of lading it is essential to make."

Now, Mr. Chairman and gentlemen, it strikes me that that is wise. It strikes me that that is a recommendation that is in the interest of all who are affected by this matter which this bill is bound either to promote or to be detrimental to. Is it not wise, therefore, for these gentlemen to concur with us and to say right now to this committee, "Four years have been consumed in this work. We believe

we have a tentative bill, at any rate, in this matter. We will put it into operation. We will not ask Congress to put into statutory form any provision at all affecting a bill of lading until the commission has made its experiment with reference to these subjects, with all the interests affected, and recommended to Congress to put it into statutory form, or until the commission comes to Congress and says, 'These roads refuse to put this into operation, and it is necessary, therefore, to appeal to the legislative power of this Government to compel what we believe is in the interest of the shipping public?'"

Now, I say frankly to this committee and to these gentlemen, let this thing go over until you have had one year's experience, anyhow. Congress meets next December. We have got an order bill of lading that we believe will give all of the bankers, and even the shippers, what they really want and practically want. I venture the assertion, Mr. Chairman, and I doubt whether I will be contradicted by any of the bankers present, that if this form of order bill of lading had been in existence a year ago, and in practical operation, these gentlemen themselves would never have been before this committee asking for this legislation. I think I am justified in making that statement from information in my possession.

Now, I say that if you make this statutory condition you can never change, can never modify these questions at all until you come back to Congress. Why, then, not treat it as a practical matter and let us have one year's experience, anyhow, by the agreement of all these great interests? I have hoped that these gentlemen would concur in that view of it.

It has been said here that we have able gentlemen present. We have. Of course I am not alluding to myself in any way in that regard. But we have no traffic man here, and the most serious propositions here involved are the traffic questions. They are the most serious propositions that are here. The question is whether that fourth section would not revolutionize the entire fast-freight lines of this country as to all bills of lading coming to a carrier as local bills of lading to go on through shipments. There are serious questions. Then we have the question here with reference to the excessive penalties. That is, to me, one of the most serious propositions in this bill, under the decisions of the Supreme Court, and one that ought to be carefully considered by this committee before they go any further. But I will not go into the merits of the matter. That is the position that I feel, as a business man, we ought to take here, and that this committee ought to sustain us in.

Mr. PATON. I would like to say a word on the question of the delay and not on the merits of the proposition. A great deal of stress has been laid here to-day on the fact that so long a time has been taken in getting together and in promulgating this uniform bill of lading, and that therefore, until this bill is tested, the time is not opportune to consider this legislation. I desire to emphasize the fact that the main thing which is desired in the enactment of this bill is not covered by this uniform bill, and can not be covered. It is a matter of law, and it can not be covered by the bill. And right there I will answer the question which the chairman asked—Did the bankers in the negotiations with the committee on this uniform bill press this point? We did not. We made no point with regard to the liability of the carrier on a false bill, knowing full well that that could

not be written into a contract by which the carrier would bind himself for a bill issued by the mistake of an agent.

Mr. FAULKNER. Why could it not have been written in?

Mr. PATON. Because the carrier would not put in that he would be liable for a false bill issued by his agent.

Mr. FAULKNER. That was because he would not; but there are various conditions in the bill that bind the carriers far beyond that question, which the legislature has power to enforce as a legal obligation upon them; and they could have agreed to this if it had been advanced.

Mr. PATON. It would have been impracticable, and we have never urged that. The matter of testing this uniform bill is not of importance with regard to this legislation, and this legislation does not prevent the carrying out of all the conditions of this bill. It is simply as to certain matters of form. We are willing, so far as we are concerned, to strike out the matter as to the size of the bill, and the other matters can be determined just as well to-day as they can years from now. We must insist that after this full hearing the matter be closed up to-day.

Mr. McCAIN. I would like to say just one word, Mr. Chairman.

The CHAIRMAN. The subcommittee have considered the matter. We announced a week ago that we could not have any further hearings. We still think that we had better adhere to that position—that there need be no further oral hearings—because our time is so limited and our committee is so pressed with business. We realize the great importance of this question. We realize it fully as much as you do. This subcommittee would like the information and the advice that Senator Faulkner has suggested to us. We know how busy the officials are that he has spoken of. Under all the circumstances we think if you could submit to us in writing, say within a week, whatever you care to say on this subject it would facilitate our consideration of this matter. We will not submit the matter to the full committee as yet, but will do the very best we can to analyze this testimony. We have had this matter pending a long while, and we are anxious to make a report to the committee some time within the next ten days. I think you can accomplish what you want by having your arguments this afternoon, and then presenting to us later whatever you care to say in writing. The subcommittee think, under all the circumstances, that that is the best thing to do.

Mr. FAULKNER. What time do we go on this evening?

The CHAIRMAN. This afternoon at 2 o'clock.

Mr. FAULKNER. I will say that I have a large amount of information from the traffic manager of the Norfolk and Western, and criticisms of the language of this bill. I received it this morning. I have not even had a chance to read it. He takes the bill up line by line and gives his practical views upon it.

The CHAIRMAN. That is exactly what we want.

Mr. FAULKNER. That I will incorporate in a brief which I will lay before the committee within a week.

The CHAIRMAN. Kindly do that; and we will be glad to have it. By the way, about Mr. Paulding. Mr. Paulding will not have much time before the Committee on Appropriations at 2 o'clock. He may have a chance to speak for fifteen minutes, but not much longer than that; so that if we can have the same argument continued I think

before it is finished Mr. Paulding will be back, and he can then have an opportunity to say what he desires.

Mr. FAULKNER. Mr. Paulding and I will join in preparing a brief.

(The committee thereupon, at 12.10 o'clock p. m., took a recess until 2 o'clock p. m.)

AFTERNOON SESSION.

The subcommittee reconvened, pursuant to the taking of recess, at 2 o'clock p. m., Hon. Frederick C. Stevens (chairman) presiding.

STATEMENT OF C. B. NORTHROP—Continued.

Mr. STEVENS. Very well; please proceed.

Mr. NORTHROP. I will endeavor to be as brief as possible, Mr. Chairman. Before going on to the practical questions, I would like to have one or two little matters in regard to the points that you questioned me about when we adjourned cleared up. Mr. Pierson, in his remarks before the committee at the last hearing, in effect stated that what the bankers wanted was a bill of lading like an ocean bill of lading, and at page 27 of the report he uses this language:

> This has been a development. This method of financing the crop and paying the drafts by the merchants and handling the bills of lading for credit by the banks has all been a development of the last few years; and the confidence they have had in it has probably been due to the confidence they have had in ocean bills of lading, which have been in effect for the same purpose for centuries.

Now, I take it that if the banks get this ocean bill of lading, or an equivalent to an ocean bill of lading, that is really what they want. Curiously enough, however, the rule that an ocean bill of lading is good only when the traffic is actually received has been the law for centuries, and the commerce of the world has been conducted for centuries on that plan. The question has been up before the Supreme Court, and has been before all the courts of admiralty. It is the universal rule that a master of a ship, although he has the greatest authority of any agent known to the law, has no authority to issue a bill of lading until the goods are actually on board the ship, or within the control of the ship.

Mr. STEVENS. But the statutes have changed that rule, have they not?

Mr. NORTHROP. I do not know that they have. For instance, I wanted to make a thorough examination of all the statutes of England and the different countries that were alluded to at the last hearing, but I have not had time to do it, but there is an interesting case from your State which I found yesterday, in which the supreme court of Minnesota uses the following language. The name of the case is the National Bank of Commerce *v.* The Chicago, B. and N. Company (46 NW. Rep., 345). The language of the court is as follows:

> There is an unbroken line of authorities in England that, even as against a bona fide consignee or indorsee for value, the carrier is not estopped by the statements of the bill of lading issued by his agent, from showing that no goods were in fact received for transportation. And this has not been at all changed by the "bills of lading act" (18 and 19 Vict., cl. 111, par. 3). It is also the settled doctrine of the federal courts.

That opinion was announced in 1890. I do not know whether any changes have taken place since, but you will note that the supreme court of Minnesota evidently had before it the English act,

and they say that that rule had not been changed by the legislation there. I will repeat that I have not had an opportunity to examine the statutes up to date, but we have this curious situation, that Mr. Pierson said they would be satisfied with an ocean bill of lading, which the banks have had confidence in. He says:

And the confidence they have had in it has probably been due to the confidence they have had in ocean bills of lading, which have been in effect for the same purpose for centuries.

And that has been the rule with regard to an ocean bill of lading, and it has stood the test of time and experience for centuries, and we ought at least to be rather slow in making radical changes.

I will now proceed to the practical matters involved in this bill before the committee. Section 4 of the bill prohibits carriers from issuing bills of lading until the goods are actually received. That is, from the standpoint of the carriers, a very admirable law, and all carriers instruct their agents not to issue bills of lading, and we feel that under our charter powers we have not the right to issue them until the goods are actually received. So, on its face, it would appear that that particular section of the statute would be absolutely unobjectionable, and it is unobjectionable from a legal standpoint. The trouble is that many matters which are legally unobjectionable; from a practical standpoint are very serious. The business of the country has been growing, and all sorts of conveniences and facilities for the quick transaction of business have been adopted and put into force and effect, and among other facilities are these bankable bills of lading, and the effort of traders to make use of the telegraph and the telephone, and instead of waiting until a cargo reaches England or Germany and collecting on that side and sending the money over the bills are discounted at once, and there are numbers of various sorts of facilities that have come into vogue.

Among others are what are known as the "fast-freight" lines. Originally, as you are aware, in the history of this country, before the large lines were developed, each road would issue a bill of lading up to its terminus. New York, for instance, would issue a bill of lading as far as Albany, and the shipper would have to follow the goods there and take out a new bill of lading to Buffalo, and so on, until the lines were consolidated all the way through to Chicago by Commodore Vanderbilt, and a through bill of lading would be issued. Passengers had to change cars, and things of that sort. Each shipper could not send his agent, and it gave rise to associations, people who would look after all those transfers, the taking up of the various bills of lading at the different stages of the journey, and there came into effect what were known as "fast-freight" lines. Sometimes those lines were composed of people who were outside of the railroads. They had no rolling stock, no rails, or anything of that kind. Other times they would be composed of the railroads themselves, and in process of time the organization has, in the main, fallen into such a state that the fast-freight lines are made up now of the transportation companies.

There are now between 80 and 90 of these fast freight lines, composed of different companies, which file tariffs with the Interstate Commerce Commission. There may be more. I have a memorandum here on this list, naming some, though not all of them, but quite a number of them. There is the Asheville line, the Star Union line, the Blue line, the Canada Atlantic Fast Freight line, the Eastern and

Southern Dispatch, the Piedmont Air line, the Diamond Dispatch, and so forth, and so on.

You take, for instance, the business of shoes, which is a very large business in the New England States. The rail lines reach the factories. They have connections going west, all rail, and they also reach, say, the port of Boston. Now, naturally enough, those lines will prefer to haul all that product west over their own rails and not be subject to the competition which springs up at Boston, where the water is reached and steamship lines, like the Merchants and Miners', Clyde, and others, which operate from that port and can take the goods, bring them down to Norfolk or to some other southern port, put them on the rails there and ship them over to St. Louis, making a competitive line through that route as against the all-rail line to St. Louis. Those roads up there issue a local bill of lading to the port for shoes. A man will ship so many cases of shoes, load them on a car at the factory in Maine or Massachusetts, and he gets a bill of lading to Boston. The moment he takes that bill of lading he puts it in an envelope and sends it down to Boston to the Merchants and Miners', or whatever line it may be; to the Asheville line or to the Kanawha Dispatch, or whatever it may be, made up, for example, of the Merchants and Miners', Norfolk and Western, the Chesapeake and Ohio, to Cincinnati, and the Baltimore and Ohio Southwestern beyond Cincinnati to St. Louis. As soon as the Merchants and Miners', or the Kanawha Dispatch, or the Asheville route, or whatever fast freight line he chooses to select get that local bill of lading, it issues a through bill of lading on that property, gives it to the shipper, he puts it in bank, sends it out to St. Louis, and it may be five or six days before the actual property comes along.

Mr. STEVENS. That is, comes to Boston?

Mr. NORTHROP. Gets to Boston, yes. That business is a very large business, and they actually issue these bills of lading before the goods are received by the Merchants and Miners' Company or the Dispatch line, composed of these different transportation companies constituting the fast freight routes.

So, take the business from the South, the cotton piece-goods business, which is a very large business. If a man located in Augusta, Ga., wants to send a shipment of goods from a factory to Shanghai, he takes a bill of lading and sends it to New York City to some transcontinental fast freight line or some transcontinental through route. As soon as that bill of lading reaches New York City the transcontinental line issues a through bill of lading to Shanghai, or to whatever other point of destination in the Orient the goods go to. It would be issued before the goods reached such transcontinental line. An enormous amount of business is done in that way. Of course the initial carrier has faith in the factory, and the transcontinental line puts faith in the bill of lading issued by the initial line, and there are millions and millions of dollars of business done in that way by various lines, and there are few cases where anything goes wrong.

Now, I asked our traffic manager yesterday whether, in his experience—he has been with our road ever since its inception and has been in the railroad business for twenty years—he had heard of many cases where things went wrong, and he said he knew of no instance in that whole period where there has been any actual case, except one or two, that an agent on our line, which has about 7,000 miles of road oper-

ating in the South, has actually issued a false or fictitious bill of lading. There was a case in Birmingham where a bill of lading was issued by a compress company, where the compress agent undertook to split a bale of cotton in two. It averaged so many bales of cotton in the compress and they split it up and issued two bills of lading for each bale of cotton, put in half a bale in each package. That was his experience of fifteen or twenty years, and there are not very many instances of that sort. Of course it is unnecessary to argue the proposition that laws should not be made for merely isolated instances.

There is also a large number of cases where bills of lading are issued as a practical matter to facilitate the quick movement of the traffic and to meet the commercial demands of the day around all these great manufacturing centers. Take Pittsburg. There will be a factory out on a spur track. They say, "Well, we have loaded this car and sealed it and we want a bill of lading." The agent will issue that bill of lading, although the car may be on a spur track belonging to the factory. It may not come down to the station for two or three or four days, something of that kind. Meanwhile the merchant has his bill of lading and he may bank it.

Of course the carrier takes the risk there, and probably in strict accordance with its charter and the law ought not to issue that bill of lading until the car is actually at the station, but there is an enormous amount of business done in that way, and it facilitates commerce.

Mr. STEVENS. If we should pass this act in about this form, would that sort of business all practically stop?

Mr. NORTHROP. We do not know exactly what the effect of a law like this would be. I have not had a chance to ask much about it, but they do not seem to know what they could do to obviate waiting until that car actually came down to the depot. Here is a law, section 4, which forbids, under heavy penalties, imprisonment and heavy fine, the issuing of a bill of lading until the goods are actually in the possession of the railway company. That is all right legally, but practically, what are you going to do? Would any agent undertake to issue a bill of lading with that statute staring him in the face, or would he not wait until the goods were actually down at the depot? And if that is done, it would revolutionize an enormous amount of traffic in the country.

Mr. RUSSELL. What would you think about a proposition of this kind: Suppose this bill should not contain section 4, but leave in it all of that section 5 beginning at line 7 and going to the end of the section; that is, to permit the carrier to issue a bill of lading without actually receiving the goods at the time it was issued, but prohibiting the carrier from disputing the fact that he had received the goods? Would that not meet the objection that we have just discussed?

Mr. NORTHROP. I do not think either one of them would. The point I am addressing myself to more than any other is how careful we should be for everybody, for the railroads, for the shippers, for the bankers, for everybody else, if we are going to have legislation, to get the right kind of legislation, and not be precipitate about it. Section 4, I say, is legally unobjectionable. The section you speak of now is legally very objectionable, and is unjust, and of course if a law is unjust, it is not going to do much good in the long run. Nobody

wants to pass an unjust law, and we should be very careful, I think, in framing this document, which is the basis of all the traffic in the country, to go about it very carefully so as to get a good law. The railroads do not object to anything that is just and proper.

I do feel that if we have the power to authorize an agent—according to the decisions of the Supreme Court we really have not that power—to issue a bill of lading before we get the goods, and somebody loses money on it, that is a very strong argument in favor of doing something to protect the person who is injured, and the railroads feel that way, too; but, at the same time, if we, as a matter of accommodation, and, you might say, as a matter of responding to the progress of the times, take up these local bills of lading, for instance, put faith in a bill of lading issued by another railroad or put faith in the representations of a reputable factory man who telephones down that he has loaded his car, and those things go along year after year, involving thousands and thousands of transactions, and only occasionally is there any fraud committed, it would appear that, perhaps, the better thing to do would be to leave it where it stands and punish criminally the people who are guilty of those frauds.

Mr. STEVENS. That is, the agent?

Mr. NORTHROP. The agent and the shipper, if they both get into collusion. One of the cases I read you this morning that went to the Supreme Court was where an agent and a shipper undertook to practice a fraud against Mr. Friedlander, of New Orleans, and Chief Justice Fuller responded to the question you asked. He said:

> The law can punish roguery, but can not always protect a purchaser from loss, and so fraud perpetrated through the device of a false bill of lading may work injury to an innocent party, which can not be redressed by a change of victim. (Friedlander *v.* Texas and Pacific Ry. Co., 130 U. S., 416.)

Mr. STEVENS. There was a case that arose in Minnesota where the railroad permitted just such a condition as you stated; that is, that the cars should be sent in and the bill of lading issued. The merchant took the bill of lading, got money from the bank, and proceeded to fill up the car.

Mr. NORTHROP. That was the butter case?

Mr. STEVENS. Yes, and then, at one time, all at once, the fellow had been losing money, and the time came when he could not pay, and the local bank took the money, and the merchant in New York who cashed the bill of lading got nothing out of it just because the railroad issued the bill of lading when it did not have the goods.

Mr. NORTHROP. I did not follow the testimony, but from what I remember it was not altogether due to the fault of the railroad company in that case. It was due in a large measure to the shipper also attempting to practice a fraud.

Mr. STEVENS. No, it was no fraud; they were doing business in good faith, but it was a loose, negligent way of doing business.

Mr. NORTHROP. As I read that testimony, this man who was dealing in butter did not have very much money, and he wanted to do business without providing himself with the necessary capital, and he then undertook to send butter down to the station, and he would get a bill of lading, and finally he persuaded the agent there to issue a bill of lading before all the butter was at the depot, and that went on for a number of years. Now, he would take the bill of lading over to his bank, and the bank would discount it, send

a draft on to the consignee, and he would then go out and buy enough butter with that very money, check on it, and fill up his car. I do not know that he was actually dishonest, but he was doing business, you know, beyond his means. It so happened that he was not satisfied with that. He put a note in the bank, and the bank got a little suspicious when he brought one of these bills of lading down, and it telegraphed on to the consignee to know whether it would protect the draft, and the consignee said yes. So, when the money came along, the bank, instead of putting it to the credit of this man, said, "We will take up your note with this money." That left him there with his checks out, which he had issued expecting to draw on this fund; he could not pay the people he purchased this butter from. I say the banks ought not to encourage that practice, and this bank ought not to have encouraged him when they finally discovered that he did not have enough money to do business; they should have shut down on him. The bank ought probably to have given a little notice to this shipper, and said that they must have that money, and probably the railroad ought to have said, "We will not issue any more bills of lading," and so on. I think that was a very loose and improper transaction on the part of all the people concerned in it, and that no innocent person should have suffered.

Mr. Stevens. In that transaction the most innocent one of all did suffer.

Mr. Northrop. Probably so, although, of course, everybody in business must take certain risks. The consignee knew the shipper, and I suppose that you can not saddle it upon everybody. Of course, it would be very well to have laws that protect and prevent all sorts of loose business, and stop all sorts of crimes. Justice Story said on one occasion that if every one was good there would be no necessity for laws, and if we make a law with reference to some particular isolated transaction——

Mr. Stevens. You have just shown that there is a large course of business of that kind, and there is.

Mr. Northrop. There is, but not like the butter case; and I say we ought to be very careful how that big course of business should be broken up, just simply on account of some isolated case of a man, in the butter transaction in Minnesota, or this case of Friedlander, down in Texas, or some other case out in California that goes through the courts. The admiralty books are full of cases, not full of them, but there have been cases for centuries where a master of a vessel out in China, or down in South America, would issue a bill of lading and get money on it, and never have the goods, yet they have never changed that law at all.

Mr. Stevens. But there is a good reason that exists why they should not, which does not exist so far as the railroads are concerned, because if the owners of the vessel be held responsible for the acts of a master in that case, in a distant part of the world, it would ruin the owners of the vessel, and would stop the commerce of the country, and that rule has never been made and ought not to be made, but that is quite a different proposition from the railroad proposition. The rule of public policy might be entirely different, as it seems to me.

Mr. Mandelbaum. May I ask one question?

Mr. Stevens. What is it?

Mr. MANDELBAUM. The counsel has referred to the Birmingham case, stating that some of the cotton had been split. In fact, there was a bill of lading issued for 300 bales of cotton consigned to Hubble Brothers, I think, and there was not a single bale delivered, and yet this very agent who signed that bill of lading is to-day the agent for the same railroad company. If that agent had not been acting in the interests of the railroad company he certainly would not be in their employ to-day. His name is Jacobsen. It is the case of Hubble Brothers *v.* The Georgia Central Railroad Company.

Mr. NORTHROP. Shall I answer your question or Mr. Mandelbaum's?

The CHAIRMAN. You may answer Mr. Mandelbaum's.

Mr. NORTHROP. Probably the same answer would apply to both, as far as that is concerned. You then meet exactly the situation presented by the reasoning of the United States Supreme Court, which is different from the reasoning which is applied in some of the States and some of the state courts, and it is a complete answer to the proposition that a railway company should be held responsible for goods which it never receives.

Mr. MANDELBAUM. If it was not authorized by the railway company, why do they retain the same agent?

Mr. STEVENS. We had better not ask questions until he finishes.

Mr. NORTHROP. I would be very glad to accommodate you afterwards. It is a question of power, reaching the power and the nature of the common carrier. Personally, I will frankly say that I can not see how that reasoning of the Chief Justice can be gotten around. That is to say, if a common carrier can not make a contract to carry something it never got, it is beyond its own ability to authorize an agent to do so, and they put it on exactly the same ground as the ship. Of course, the majority of the agents of the railroad companies are perfectly honest, whether they get much pay or small pay. Take our experience here in fifteen years. Mr. Green said to me yesterday that he had never known of one case except this particular Birmingham matter. We have handled millions and millions and millions of dollars of freight, and we rely on the honesty of our agents. Some of them get very little, and have a great deal of work, but I believe personally that honesty is not a matter of price. I have seen just as dishonest men getting big salaries as getting small salaries. That is our experience. I do not know what the experience of other roads is, but I have no doubt it is the same, and you find very few cases in the books. Where they commit these frauds they ought to be punished. You take a bank cashier who forges notes, and things of that kind, and he ought to be responsible for his criminal act, but the man whose note he forges ought not to be responsible, even though he authorized him occasionally to sign his name. Take bank notes, there are a great many instances where bank notes are counterfeited. That is an individual crime. That is the way the law has been dealing with them heretofore. They do not break up bank notes and stop the issue of them altogether.

Mr. STEVENS. I do not think the cases of fraud would arise as often as cases of mistake, where the agent in good faith has issued a bill of lading, and then something occurs, and he thinks that one is destroyed, and another one is issued. He has been negligent in permitting the second one to be issued until he knows the first one has been destroyed, but that is done, as a matter of fact, in some way.

Mr. NORTHROP. It is done occasionally.
Mr. STEVENS. It is done occasionally?
Mr. NORTHROP. Yes, sir.
Mr. STEVENS. Now, in such cases ought there not be a redress somewhere in favor of an innocent party?
Mr. NORTHROP. There is; the common law provides redress. Take in case of a shipper, even a case of fraud or mistake, he gets money from a consignee on a bad bill of lading or a bad note, and you can always have your action for money had and received.
Mr. STEVENS. Against whom?
Mr. NORTHROP. Against the person who gets the money.
Mr. STEVENS. Against the shipper? He may be insolvent, may skip out.
Mr. NORTHROP. There is no reason, then, why you should substitute the victim, as Chief Justice Fuller says. If he is insolvent, that is one of the misfortunes of trade.
Mr. STEVENS. But it was your company that caused that condition to be brought about.
Mr. NORTHROP. No; not altogether.
Mr. STEVENS. Yes; it was your mistake, by issuing the bill of lading.
Mr. NORTHROP. Not altogether.
Mr. STEVENS. In collusion with him, possibly not fraudulently, innocently enough; but it was your mistake that caused that to be brought about, and an innocent party is injured.
Mr. NORTHROP. We are not the cause of this man's insolvency.
Mr. STEVENS. You help him to get the money?
Mr. NORTHROP. No; we just simply commit an error, you might say, in a million transactions, an error that our charter rights did not give us the right to commit.
Mr. STEVENS. I do not know about that.
Mr. NORTHROP. I am simply going by the opinion of the Supreme Court. That is convincing to my mind. There are cases in some of the states that take another view of it.
Mr. RUSSELL. On the suggestion you were indulging awhile ago, would it not be fair to subrogate the carrier to the original consignee and let him go back for the money had and received?
Mr. NORTHROP. I do not see why we should. We will some day reach the millenium, I have no doubt, and all business men will only take 2 or 3 per cent profit; all banks will lend any man money, whether he needs it or not, or whether his bank credit is as good as anybody else's; when cashiers will not run off with the funds, and the Sunday-school teachers will not carry off the collections; but just simply because those things happen, and they are not so very many, I have not lost my conviction that the world is honest, bound to be honest. I have even read things about Senators and Congressmen that some people believe are so. There is no method of checking thousands of men. I do not care how many laws are passed, a man has to rely on the honesty, not altogether of the big man, but really of the small man who does the work, and they do it, and merchants do it, companies do it, and railroads do it. The railroads have had men in their employ who have been known to give up their lives to save a train, and all that sort of thing, and they do not get very large salaries. Now, when a great body like Congress is legislating they

should take broad views, and not be governed by a few isolated instances.

Mr. STEVENS. No; but now here is a pretty broad situation. Let me show you the situation as it has been stated to me in our section of the country. In the purchase of small grains there are two different classes of people who do the business, one is the large elevator companies with the large capital and large credit, so that they can borrow millions of dollars any time they want it. There are a large number of small dealers, independent elevators, as they are called in our section of the country, who have small capital and need to borrow their money very quickly. It is the custom of those small elevator companies, or the small independent dealers, to have a car set on the side track just exactly as you stated, get a bill of lading, use that money in whole or in part in purchasing that wheat or grain or whatever it may be, load the car as soon as possible, and send it into market and dispose of it. Suppose the wheat can be sold for cash the moment it gets to the terminal. That is repeated. There have been quite a number of losses, so our bankers tell us in the Central West, on one account, in one way or another, because something happened to the car, it did not get into the market finally, or something of that kind. Anyway, the party did not come forward to pay the bill of lading. The bankers claim that unless they are safeguarded in some way they can not afford any more to cash those drafts with a bill of lading attached. If they do not, those independent dealers will have to shut down and stop doing business. That interferes with the business in a large section of the country in the movement of small grains. That is the complaint that comes from our section of the country, and why they want some legislation like this.

Mr. NORTHROP. It would be a very good thing to devise some plan by which the small dealers could get on and the bankers could be protected, and we are as much interested in that, for the railroad is obliged to be, as anybody.

Mr. STEVENS. All they want is that when the railroad company actually issues a bill of lading they should be responsible for what they say they received.

Mr. NORTHROP. If you are going to pass a law of that kind, you have to balance the troubles that may be cured in one section against those that may created in another.

Mr. STEVENS. That is exactly what we want to do, and we want you to tell us about the others.

Mr. NORTHROP. There is this tremendous volume of business that we do, and it looks, for instance, if this law were passed, as if it would disturb that business very greatly, to the detriment not only of the railroads, but of the shippers and other people. I have not had the opportunity of estimating how much inconvenience or trouble that would cause. I think the thing ought to be looked into very carefully on those lines. You would not want, for instance, to remedy a situation—let us concede for the sake of argument—that ought to be remedied in Minnesota——

Mr. STEVENS. The cotton people make the same argument to us.

Mr. NORTHROP. I know something about the cotton business. For a period of fourteen years the Southern Railroad Company has handled immense amounts of cotton throughout the South, and that is the

only case. Of course, I suppose those agents in the compress transaction—I do not know who they were or what they were—if they were actually dishonest, were gotten rid of. This case that Mr. Mandelbaum spoke of——

Mr. MANDELBAUM. Is that the only one?

Mr. NORTHROP. The only one; this case that Mr. Green——

Mr. RUSSELL. One occurred at Houston, Tex.?

Mr. NORTHROP. We do not reach Houston. I am speaking of the Southern Railway Company; we do not reach Houston, we go as far as Birmingham.

Mr. RUSSELL. I thought you meant for the whole South.

Mr. NORTHROP. We reach Greenville, Miss., and Memphis, Tenn., but we do not get across the river.

Mr. RUSSELL. We had a case stated to us that occurred at Belton, Tex.

Mr. NORTHROP. There might be some cases over in Texas. This Friedlander case, that got into the Supreme Court, came up from Texas, but I am just saying that our freight traffic manager told us yesterday, when I asked him, "How many cases do you know of where an agent has issued these bills of lading and anybody has been defrauded, the property had not been actually received?" he said: "I don't know of any case on our line in our experience except this Birmingham case."

Mr. MANDELBAUM. How about the case of Hubble Brothers Company *v.* The Georgia Central Railway?

Mr. NORTHROP. He probably did not know of that case. There have been such cases, have always been such cases with ships, and always will be such cases. But suppose you pass a law here to prevent that? Here is this Shaw case, that went to the Supreme Court, where the goods had been actually received. The bank in St. Louis had honored the bill of lading, discounted the draft, sent it on for collection; somebody steals the bill of lading, goes to another fellow and discounts it over again. You can not stop dishonesty. Suppose you would say, "We will just correct everything by passing a law to prevent these railroad agents from issuing bills of lading, even once in a thousand years, if they do not get the goods; stop it altogether." Then you will have cases like that—like the Shaw case—an actual case, and if the bill of lading had been given the characteristics that this present enactment seeks to give it, the St. Louis bank which advanced this money could not have gone into court and claimed the property, because there was the man walking up with the bill of lading and saying: "I have the bill of lading in my hands; I have paid the money for it, and now I want the goods." The railroad company would say, "Well, under this law here you are entitled to the goods, and the bank of St. Louis would have been unable to get this property, although that bill of lading had been stolen in transit. If you were to give these bills of lading anything near—not to use the word "negotiable"—but anything near the characteristics of a bank note or of money, you would have I do not know how much trouble in that direction. It is one of the sort of things that is just full of avenues that require investigation.

Mr. STEVENS. We realize that, but do you think it is a fair argument on your part to allege that there are only a few cases?

Mr. NORTHROP. I certainly do.

Mr. STEVENS. Then, if that is true, how much are you injured if we pass such a law, if we do not have many cases?

Mr. NORTHROP. If there are only a few cases, I do not see that there is any special degree of injury in money, but we would be injured by injustice, and the law would not cure any defect of power.

Mr. STEVENS. We are not discussing the question of power; we are discussing the question that there is a certain section of the country, as I said a few moments ago, that would be assisted by the passage of this law. We ask you to show other instances where business interests would be injured by the passage of this law. Now, if we are balancing the thing to find out what is the best thing to do for the whole country, and if you show there are only a few cases where injury would occur by the passing of the law, can that be compared with the vast number of cases that would be benefited by the passage of the law?

Mr. NORTHROP. You either have to admit that there would be a few cases that would be helped not so very much, or you have to admit that there would be a great many that would be helped. If you are going to benefit a vast number of cases by law there must be a vast number of cases to be benefited. If there are only a few cases, how can the law benefit a vast number?

Mr. STEVENS. There are enough cases so that it impairs the credit of a large class of people who are developing and moving the crops of a large section of the country. That is the point.

Mr. FAULKNER. Will you permit me to make a remark?

Mr. STEVENS. Certainly.

Mr. FAULKNER. Is it simply a question of setting up one against the other, these liabilities or inconveniences or these losses, between the banker and the road. Is not the question the effect it will have upon the general traffic of the country that Mr. Northrop has been trying to draw the attention of the committee to?

Mr. STEVENS. That is what we are trying to find out.

Mr. FAULKNER. It is not to compare the money losses between the shipper, the banker, and the road, but how it will benefit or injure the general commerce of the country and the movement of traffic. That is really the matter in issue.

Mr. NORTHROP. Of course, I want the committee to appreciate that I am only speaking for the Southern Railway Company, our experience. I would not undertake to speak of the experiences of other lines in other parts of the country. I do not know about that, but our traffic manager informs me that, in our experience, we have had practically few instances of any frauds or any losses that have been the result of the methods of doing business which we have practiced in the past. It may interest you to know that we have got out this new bill of lading, and we have gone further than the uniform bill of lading, and may be a little further than this law, in trying to protect the banker, in so far as we get the goods. According to the original tenor and effect of the instrument, we are responsible for the goods actually received. We further make that bill of lading negotiable to the extent of putting it in affirmative language—that is to say, that the goods can not be delivered without the surrender of that bill of lading, which the banks want, and probably it would help business along to get it. We feel that the banks do not want anything antagonistic to us. If they understand our position, we know they

realize we do not want anything antagonistic to them. This new bill of lading we are trying to get out may suit them entirely, so far as their interests ought to require, and so far as this committee would care to recommend, I believe. Of course, we do not undertake, in that new bill of lading, to be responsible for goods we have never received, but if we receive ten bales and somebody goes and raises the bill of lading up to a thousand bales we make ourselves liable and responsible for the ten bales.

Mr. STEVENS. The Interstate Commerce Commission rules provide for that.

Mr. NORTHROP. You mean the uniform bill of lading which they authorized?

Mr. STEVENS. Yes.

Mr. NORTHROP. And I feel I am justified in saying that the commission—of course I do not quote them authoritatively—feels that is in justice to all interests concerned. There are large numbers of interests involved in this matter. There are myriads, you may say, and it is a difficult task to frame an instrument or frame a law that will provide for the absolute protection of everybody concerned in commerce and eliminate all risk.

Mr. RUSSELL. Do you know of any objection to that portion of this bill that prohibits the carrier from surrendering the property until the bill of lading is surrendered?

Mr. NORTHROP. We are going to put that in our bill of lading.

Mr. RUSSELL. That is unobjectionable, then, so far as you are concerned?

Mr. NORTHROP. Yes.

Mr. FAULKNER. There is one suggestion that might be made there. You limit the right in your bill to surrender the property on an order bill of lading, without taking an indemnifying bond. Some roads have a different practice. They require a certified check, and some require a deposit before the surrender of a bill of lading, and in addition require that the order bill of lading shall be produced within a certain time or this certified check may be used. The question is whether, if you do pass any bill on this subject, it ought not to be a little broader than it is therein provided as to the indemnifying clause.

Mr. RUSSELL. A certified check ought to be more acceptable than an order of indemnity.

Mr. FAULKNER. But you do not authorize that. When you provide a statutory provision, authorizing the surrender of the order bill of lading on certain conditions, those conditions are obligatory as expressive of the legislative will, and when the legislative will has spoken it is the only way you can meet the condition.

Mr. RUSSELL. Then your suggestion is that we can enlarge the scope of it by saying we can enlarge the indemnity?

Mr. FAULKNER. Yes; that is only a suggestion I make in answer to the chairman.

Mr. NORTHROP. In other words, if you make a statute, convert all these regulations into a statute, and prescribe that we shall do so and so, of course that might be exclusive. If the railroads were asked to draw a bill and provide justly for the interest of everybody, I do not believe that so far as the Southern Railway Company is concerned, we could feel that we had sufficient information on which to

draft a bill. That is the same position the Interstate Commerce Commission is in. I believe that if you should ask them to-day to draft a bill they would say, "We have been through this three or four years. We are experimenting. We are trying to find out what is best for everybody." There may be a time when they would recommend legislation, but it is a tremendously important bill. It is the foundation of the whole transportation system of this country—rail, water, and everything else. There are things in the bill that probably we would not object to. I refer to the Southern Railway Company. Just as the Senator has remarked, it is not our practice to require certified checks. We are perfectly willing to take a bond and the southern roads are going to put in their bill of lading a clause stating that the property will not be delivered until the surrender of the order bill of lading. I think in time, probably a short time, by these efforts on the part of railways and the commission and the States and the people interested in the subject, we will get an instrument that will be a good protection to everybody, and the time may come when they can put that into a statute.

Mr. RUSSELL. If that feature is inconvenient to anybody, it would be to the consignee, would it not?

Mr. NORTHROP. Yes.

Mr. RUSSELL. It would not be any hardship on the carrier?

Mr. NORTHROP. Not unless the goods were left on our hands; but there is a clause in this bill, as I read it, that provides for the sale of unclaimed property.

Mr. FAULKNER. This property is not unclaimed. They would have to hold it and be responsible for it, either as warehousemen or as carriers, and that would be the responsibilities of the railroad. The question is whether you could not dispose of this property after a certain time; that is what you want to do.

Mr. STEVENS. That is the law now.

Mr. FAULKNER. I know it is, and that is what you want to observe.

Mr. RUSSELL. There would not be anything in this bill to repeal that law?

Mr. NORTHROP. No; this bill provides for the sale of the unclaimed property. That would be about the only inconvenience I can think of now.

Mr. RUSSELL. When you passed from the consideration of section 4, you said you had some practical objections to the bill, and you said there were some very grave legal objections to section 5. Are those the objections you have already stated?

Mr. NORTHROP. Those are the ones I have already stated.

Mr. RUSSELL. The only legal objections you interpose to it are those you have already stated to the committee?

Mr. NORTHROP. Yes; the decisions of the Supreme Court, in construing the power and nature of a common carrier, and the decisions of the Supreme Court which hold that a bill of exchange is not commerce, and therefore, of course, if this bill of lading is to be given the attributes of a bill of exchange, there would be grave doubt of its being commerce at all. There is no need of going over that again unless you desire.

Mr. RUSSELL. No; never mind.

Mr. NORTHROP. The last clause of section 7 I did not take to mean we would be responsible for an alteration made fraudulently by our agent. If it does mean that, it ought to be changed and altered.

We should be responsible according to the tenor and effect of the bill of lading—that is, for the goods we get.

Mr. STEVENS. If a statute be passed, you think that some such language as was in the Interstate Commerce conditions ought to be included?

Mr. NORTHROP. I think so. We say its "original tenor and effect." We use those words. Section 10 of our bill of lading is as far as I think the law ought to go on that point. If section 7, as it now reads, means anything more than that, I do not think it would be just to pass it as it stands. I thank you very much for your attention.

STATEMENT OF HON. CHARLES J. FAULKNER, OF WASHINGTON, D. C.

Mr. FAULKNER. I understood from the remarks of the chairman this morning that on account of the business now before Congress the subcommittee did not care to hear anything further orally, but would give the privilege of submitting objections to the bill within a week in writing. If that is the understanding of the committee, I will certainly not embarrass them by asking a further hearing on my part, and I think, Mr. Paulding, that was your conclusion?

Mr. PAULDING. Yes; Senator Faulkner and I will join in a brief.

Mr. FAULKNER. By that arrangement it will relieve you gentlemen from hearing us at this time.

Mr. STEVENS. Do you desire any time this afternoon, Mr. Paulding?

Mr. PAULDING. No, sir; as long as we have the privilege of submitting a brief. I think all we have to say would be better submitted that way than orally, because all I wish to say would be to speak on such facts as we think the law relates to. If we can place those facts in writing for you in the form of a brief, I think what we have to say on the subject can be better said in that way than we could say this afternoon. It would be more logical.

Mr. STEVENS. If you have anything to submit, you may have a week in order to file it with the committee.

Mr. NEALE. I should like to file a brief on behalf of the Pennsylvania Railroad.

Mr. WILLISTON. Mr. Chairman, I would like to say a few words.

Mr. FAULKNER. I would like to have my friend explain what he means by the proviso to that seventh section.

STATEMENT OF SAMUEL WILLISTON, ESQ., REPRESENTING THE NEW YORK COTTON EXCHANGE, THE AMERICAN WAREHOUSEMEN'S ASSOCIATION, THE NEW YORK MERCANTILE EXCHANGE, THE NEW YORK PRODUCE EXCHANGE, THE MERCHANTS' ASSOCIATION OF NEW YORK, THE DRIED FRUIT ASSOCIATION OF NEW YORK, THE NATIONAL HAY AND GRAIN DEALERS' ASSOCIATION, THE AMERICAN BANKERS' ASSOCIATION, THE NEW YORK STATE BANKERS' ASSOCIATION, THE GALVESTON COTTON EXCHANGE, AND THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE OF AMERICA.

Mr. WILLISTON. In the first place, I desire to say that there is a single verbal error on page 5 in the second line of the committee print. The word "delivery" in the second line should be "surrender" or "indorsement." It is a mere verbal slip.

A great deal has been said to-day in regard to the uniform bill of lading and the importance of giving it a fair trial. Now, the interests which I represent are heartily in favor of the uniform bill of lading. The Interstate Commerce Commission, in great measure, adopted the suggestions which those interests suggested, and the railroads ultimately conceded them, although some of the features which were requested, such as separate forms of documents, the railroads at first said were wholly impracticable. One reason why we present the bill in the form that it is before this committee is because we are so heartily in favor of the uniform bill of lading. That bill of lading is not adopted everywhere. For instance, the southern railroads not only do not adopt it, but have produced a form of their own, which, to the mind of the parties who I represent, is highly objectionable. There was a great deal of discussion before the Interstate Commerce Commission and in the negotiations leading to the bill finally adopted, in regard to the use of the words "not negotiable" across an order bill of lading. It was the general practice of railroads to print or stamp "not negotiable" on order bills of lading, and just what they meant was the case of uncertainty and litigation, a litigation which was not always decided in the same way. The railroads finally conceded to the shippers and the bankers the omission of these words "not negotiable." We did not ask that the word "negotiable" be put on; let the thing speak for itself, simply do not label it "not negotiable." The southern railroads propose to return to those words.

Mr. NORTHROP. Might I interrupt you?

Mr. WILLISTON. Certainly. The Haynes bill has that in.

Mr. NORTHROP. That is the original rough draft. I think very likely we will leave those words off.

Mr. WILLISTON. I hope you will.

Mr. NORTHROP. And just express it in this way, in the affirmative, that this bill is assignable and negotiable to the extent of the surrender clause and protection of section 10 on the back of the bill.

Mr. WILLISTON. That would certainly be much less objectionable to us.

Mr. NORTHROP. I would like to add that that has not been absolutely determined on yet, but it is more than likely to be the phraseology.

Mr. WILLISTON. At any rate, the purpose of the first two sections of this statute is simply to back up the uniform bill of lading promulgated by the Interstate Commerce Commission. We understand that that bill is not necessarily final, that cases may, in practice, be found desirable, and for that reason we have not attempted in this committee print to reenact the whole bill of lading proposed, but only the few salient points that seem to us to be absolutely unchangeable.

Mr. STEVENS. Then do you not think it would be wise to leave out of any statute some of these details?

Mr. WILLISTON. I think that (b), in setion 1, as to the size of the paper might well be omitted, and (a) in section 2. I do think those are details which are perhaps unfitted for absolute legislation, and are rather appropriate to regulation.

As I have said, we are in favor of the uniform bill of lading, but it does not seem to be clear to the gentlemen speaking for the railroads—and I am surprised that it does not—that no uniform bill

of lading, whatever its terms, can secure to us what we want in the remaining sections of this act. If a bill of lading said, "This bill of lading shall be binding," whether it was issued without goods received or not, what would be the validity of that stipulation in a State which holds, as Minnesota and a majority of the States hold to-day, that an agent who issues a bill when it has not received the goods can not bind his railroad? He would not bind his railroad by that clause any more than any of the rest of the bill. The question is in regard to the validity of the execution of the document, and whatever its terms are, if the document as a whole is invalid because there is a fatal flaw in its execution, no rights whatever can arise under it.

Mr. FAULKNER. Would the gentlemen permit me to interrupt him?

Mr. WILLISTON. Certainly.

Mr. FAULKNER. What is the legal objection you urge here to the road agreeing, as it does, when it puts that condition on the bill of lading, in consideration of the compensation received for the transportation of these goods, "I agree to become responsible for the amount of goods set forth in the bill of lading and signed by our agent?"

Mr. WILLISTON. There is no objection whatever, sir; but the point that is taken by the Supreme Court and courts which follow it is that the railroad does agree when the agent signs.

Mr. FAULKNER. I understood your point just now to be that they could not agree by putting it in a bill of lading.

Mr. WILLISTON. You misunderstood me.

Mr. FAULKNER. I must have misunderstood you.

Mr. WILLISTON. My understanding is that if it is put in the form of a bill, and the agent signs without authority—and that is the case we are dealing with, where the agent signs without authority—the railroad will be bound neither by that stipulation nor any other stipulation in the bill. They all stand or fall together. As to the propriety of this provision in section 4, I will not repeat what the committee has already patiently listened to at great length. I simply wish to make clear that it is not a matter which a uniform bill of lading can cause or cure.

I want to say a few words in regard to the practical effects of this There is no proof of the pudding like eating it. There is no proof of practical effect like trying. The provisions of the law that we request here are already in force in enough States to make the trial sufficiently convincing that no revolutionary consequences to business will follow. There are 7 States that now enact that there shall be civil liability for fictitious bills. There are 18 States that now enact that there shall be a criminal penalty. The State of New York at common law, without the aid of statute, has imposed civil liability, and I want to call the attention of the committee to this particularly, that in those States where this is the law, frauds do not happen. The solicitor for the New York Central Railroad, who said he was in a position to know about this matter if it happened, said he did not know of a case.

Mr. PAULDING. Perhaps those men are more honest in New York than in other parts of the country.

Mr. WILLISTON. Perhaps they are, and I think their honesty is promoted by the rule of law in question. In other words, it is natural

that it should be. When an agent knows that his principal is going to get into trouble and that if his principal gets into trouble that he will get into trouble pretty quickly, he is not going to be as polite and convenient to his friend, the shipper, who comes around and wants a bill of lading before he ships the goods.

Mr. PAULDING. They get it every day, Mr. Williston.

Mr. WILLISTON. It seems to me, if that is courteously allowed, the responsibility ought to stand behind it. I was a little surprised at what, as it seems to me, is the inconsistent attitude of Mr. Northrop in regard to this matter. He argued very strongly that it was beyond the charter powers of the railroad to issue bills of lading without receiving goods, and in another part of his argument he agreed with Mr. McCain in saying that the business interests of the country required that it be freely done. It may be ultra vires, but it is not every ultra vires act that is followed by freedom from liability for the corporation that is guilty of the ultra vires. As for the responsibility for delivering goods without taking up the bill of lading, our point is this: In seeking statutory relief when there is something in the bill of lading in regard to that the railroad is undoubtedly responsible under its bill of lading, but to whom? The view that we are met with when the case comes up with the railroad is the view that was cogently presented by a member of the committee not now present, that a bill of lading is a contract of carriage between the shipper and the carrier. When some poor fool buys a bill of lading and he wants to hold the carrier responsible for delivering goods without the surrender of the bill of lading, he is met by that argument, that there is no contract with him to that effect, and I can provide the railroad gentlemen with a number of cases, if they wish to have them, where that contention has been made by railroads, and in some cases successfully. That is why we are not satisfied with having simply a provision in the bill of lading.

Now, a single word in regard to section 7 and I shall have finished. Perhaps I can give the reason for that section best by giving the history of it. There is a provision very similar to this statutory provision in the bill of lading that was agreed upon, and there was a very similar provision in the old uniform bill of lading. The words "fraudulent or otherwise," however, which are found in this section, are not found in the bill of lading clause. A case came up in Baltimore, Md., where there was a fraudulent alteration, and it was argued on behalf of the holder of the bill of lading, a bank which would take bills of lading of that sort, that the bills were good for their original tenor, but the carriers said no and the courts upheld them, on the ground that that alteration clause did not cover a case of fraudulent alteration, but only covered innocent alteration, and that, therefore, if there was a fraudulent alteration the rule of the common law applied and the document became void. Now, it seemed to us that there was no hardship in holding the railroad to the original tenor of its document in favor of an innocent purchaser, even though the document was fraudulently altered. That is the history and purpose of this section 7.

Mr. FAULKNER. The proviso is the thing I am worried about in section 7.

Mr. WILLISTON. Well, you raised the question there whether an alteration by the agent of a carrier should bind the carrier.

Mr. FAULKNER. It seems to me that the purpose of that is to allow an agent of a railroad company, even after the issuance of the bill of lading and in the hands of the shipper, by collusion with the shipper, to make the fraudulent statement upon the bill of lading and hold the carrier responsible for it.

Mr. WILLISTON. That proviso, of course, is a positive enactment; it was not drawn with that intention. It was intended, rather, to prevent the first part of the section having too wide an effect.

Mr. FAULKNER. Could not that effect occur?

Mr. WILLISTON. I withdraw what I said.

Mr. RUSSELL. If the law proposes to hold the carrier responsible for the issuance of the bill of lading itself, and there is no bill received, if that would be just and legal, and I do not express any opinion about it, I certainly think this ought to be in it.

Mr. FAULKNER. This is in reference to the proviso of the seventh section, which assumes the alteration to be made after delivery, because it can not be an alteration prior to delivery. There can not be a material alteration, addition, or erasure on an order bill of lading before its delivery. That is a legal impossibility. It does not say that there shall be no material alteration, addition, or erasure in the print of the bill of lading, which would then limit it to the alterations made on the print, and confine it to that question, to a case of alteration prior to the signature and the delivery of the bill of lading, but there can not be an alteration of a bill, or an erasure, or an addition to the paper until the delivery of the paper, the first delivery, as it is neither a receipt or contract before delivery.

Mr. WILLISTON. Yes; that is undoubtedly so.

Mr. FAULKNER. Now, then, to come down to the proviso:

Provided, however, That an alteration, addition, or erasure

which must be an alteration, addition, or erasure occurring after the delivery of the paper,

in or to any such bill of lading with signature thereto indorsed thereon by the issuing carrier,

not by the agent who issued it originally, but by the issuing carrier, which means any agent of the issuing carrier,

or his officer, agent, or servant in his behalf

it makes no difference at what period of time the alteration is made, or what agent or what officer or servant may make it in the name of the carrier,

and with the consent of the holder thereof, shall be valid and effective.

That gives the power to any servant or any officer of the carrier, after the issue and delivery of the bill to the shipper, to make any alteration in collusion with any officer, agent, or servant of that carrier, and, by agreement with the shipper or holder, to raise the bill or change its condition. Your bill binds the carrier to all such alterations.

Mr. WILLISTON. I think there should be a little qualification, perhaps, in the twentieth line, next to the last line. If, in the middle of that line, after the word "servant" the words "authorized to issue bills of lading" were inserted, I should stand by the form.

Mr. FAULKNER. Why would you permit another agent who did not issue this bill of lading——

Mr. WILLISTON. If he is authorized to bind his carrier before issuing the bills of lading, I think he has sufficient authority.

Mr. STEVENS. What evil have you to cure by your proviso?

Mr. WILLISTON. I do not know that we have any specific cases to adduce.

Mr. STEVENS. Then, if you do not need it, what is it in there for?

Mr. WILLISTON. We were dealing with the subject of alteration, and we attempted to make a comprehensive provision. That is our actual attempt.

Mr. PATON. The object in drawing this section was simply to carry out the provisions of section 10, with the inclusion of an alteration. If it was fraudulent, the section would also apply. In so drawing it it seems that this construction suggested by Senator Faulkner may have some weight, and so far as our intention and purpose are concerned, we simply want to carry out the provision of section 10, to make it broad enough so that not only when there is an innocent alteration, but a criminal alteration, the bill is good for its original tenor, and also in the case of a criminal alteration, being valid where it is made with the consent of the shipper and signed and noted by the issuing agent.

Mr. WILLISTON. There is just one word that caused comment on page 4, the word "consequential" in the eighteenth line, "for all damages, immediate or consequential." Of course, we can not ask to have legally remote damages. If the word "proximate" is inserted before the word "damages" there could be no question, "for all proximate damages, immediate or consequential," because all damages are sometimes proximate.

Mr. PAULDING. What are proximate damages, Professor?

Mr. WILLISTON. I should have to write a law book to tell you that, but it adopts, as far as that goes, simply the rule now existing. I do not wish to change it, but whatever are proximate damages, if you are liable at all for a wrong, you are liable for them now.

Mr. PAULDING. I asked you the question because, when you used the word "proximate" in connection with the damages, I was puzzled; I would not know what proximate damages were. If the word "proximate" was put in this act, "for all proximate damages," I would not be able to say that that limited the words or interfered with the word "consequential" in any way. In a real estate action, for instance, consequential damages only include such damages as may be proximate. What does the word "proximate" mean in this connection? I must confess I do not know.

Mr. WILLISTON. It would mean just the same as it would mean to strike out the words "immediate or consequential," I take it. That is, when a railroad is made liable for damages, it means necessarily the damages that are proximate in the legal sense of that word, and if nothing further is added, I take it, that would cover our purpose.

Mr. PAULDING. Some States apply the squib case, and other States do not.

Mr. WILLISTON. This would be a federal statute, and a federal court would have to make its own rule as to that.

Mr. RUSSELL. What have you to say about the suggestion made to us this morning, that if this bill should give to a bill of lading the characteristics of being a negotiable instrument, that would take it out of the category of being commerce.

Mr. WILLISTON. I think your answer to that was complete. The primary importance of negotiability is as to purchasers of the document. In the act that was presented last year to this committee there were sundry provisions in regard to the effect on a purchase or pledge of an order bill of lading, as between the pledgor and pledgee. It seems to me that the objection might fairly be made that such provisions were not regulating interstate commerce, but when the commerce is between the carrier on the one side and the person claiming an interest in goods which are shipped on the other, any regulation, it seems to me, in regard to that contract of carriage is clearly a regulation of interstate commerce, and even if there are no goods, the contract the carrier makes in the bill of lading is a contract for an interstate shipment of goods. It is nevertheless a contract for interstate commerce, because there are no goods behind it, and any regulation in regard to the effect of that contract to carry goods from one State to another, it seems to me, is very clearly a regulation of interstate commerce. It is nothing like a bill of exchange or an insurance contract. In those cases there is not any contract to carry anything, but this is a case of a contract to carry goods, and the question of the liability of the promissor is in that contract and his contract to carry goods from one State to another.

Mr. FAULKNER. May I ask a question in connection with that, in order to get some information on the subject?

Mr. STEVENS. Certainly.

Mr. FAULKNER. There is no question of the power of Congress, under the power to regulate interstate commerce, to pass regulations in reference to that commerce. But can Congress, under the power to pass regulations, impose a contract upon a carrier in reference to the subject-matter of his duties?

Mr. WILLISTON. Perhaps it can not change the effect of an existing contract, but it can dictate what kind of contracts shall be made in interstate commerce, and it has done so in the Harter Act.

Mr. FAULKNER. It has done it in some cases to some extent, not directly on the question of contract, but on the question of evidence to be introduced in reference to the contract. You will remember the case of Lake Shore and Michigan Southern Railway Company *v.* Smith (173, U. S., 684) as to a 1,000-mile ticket, where the court discusses the question of the power of Congress to enforce this character of contract under the right of regulation.

An examination of this case will throw much light on this subject. In it they denied the right of the legislature of Michigan, under the due-process provision of the Constitution or under the authority to regulate, to pass such a law.

Mr. WILLISTON. Yes; but, of course, there is not any interstate commerce at all; it is not a carriage of goods; it is a question of rate of passenger fare.

Mr. FAULKNER. Was not the act you refer to a marine act?

Mr. WILLISTON. The Harter Act?

Mr. FAULKNER. Yes.

Mr. WILLISTON. Yes; an act with reference to marine bills of lading, but it comes under the same provision. There is no separate provision in the Constitution for marine carriage. I suppose it is true that it would, perhaps, be impossible for Congress to pass a law,

even in regard to the transportation of interstate commerce, which would impose a contract on the carrier which was a forfeiture; that is, if it is enacted that a carrier must carry under terms on which it could not make a business profit, that might be not due process of law.

Mr. RUSSELL. What is your opinion about this state of affairs? Has Congress the power under the interstate commerce clause to punish an attempt to perpetrate a fraud on interstate commerce?

Mr. WILLISTON. I should say yes.

Mr. FAULKNER. It would be questionable.

Mr. WILLISTON. If it is a fraud in making a contract in interstate commerce, it seems to me Congress must have the power to punish.

Mr. RUSSELL. That is the suggestion I intended to convey to you.

Mr. WILLISTON. It seems to me Congress must. I can see no difference myself, I say frankly, between civil liability and the criminal liability.

Mr. RUSSELL. It would be, then, dependent upon the power of Congress to protect interstate commerce by preventing the fraud?

Mr. WILLISTON. Yes; it seems to me clearly a regulation of interstate commerce by protecting the legitimate commerce and punishing fraudulent simulations of it.

Mr. MANDELBAUM. There is one thing I would like to say, and it will take only one second, and that is this: Mr. McCain has stated to this committee to-day that bills of lading are issued on telegrams and telephone messages, and it seems to me, almost, they are issued on anything but the receipt of the goods. [Laughter.]

Mr. McCAIN. I made it very clear, I thought, Mr. Chairman, that if a railroad got a telephone message that four cars of freight were ready for transportation, that the issuance of any bill for such a transaction would be issued to a concern they regarded as an entirely reputable concern. I made that point, that those transactions were with reputable concerns and it was to facilitate the business of those reputable concerns that that practice had grown up.

Mr. PIERSON. And you are willing to pass upon the credit and take the responsibility for such acts?

Mr. McCAIN. I think so. Railroad companies have a credit list, as you must know.

Mr. PIERSON. I know; we help them.

Mr. McCAIN. You have a nest of people right around your bank in New York, a great many of whom do not have any credit.

Mr. PIERSON. I agree with you.

Mr. McCAIN. You no doubt agree with me. What I wanted to bring out was, in the actual issuance of the bills of lading the transportation companies had gone very far in doing everything they could in facilitating the issuance of bills of lading, and the point I made was, that if you are going to make a specific requirement under a penalty that the railroads leading eastward from Chicago, before issuing a bill of lading, must know the man has four or ten cars of freight on his tracks this afternoon before he takes up the reputable bill of the Northwestern Railroad, you are going to introduce a new method of handling that business that I think is going to be very troublesome to the people who want the accommodation under these bills of lading. There are 60,000 railroad stations in the United States, if I remember correctly, and 60,000 agents issuing bills of lading. As I said this

morning, in the instructions that were with those bills of lading there was the greatest care taken to instruct all of that class of people of the necessity of safeguarding this new style of bill, and its proper use, and everything of that sort. Now, when I say 60,000, I want to impress upon the committee the enormous number of transactions that occur every day in the issuance of these bills. There is one firm in New York City that came to us with some objection to the new form of the bill of lading, and asked some modifications in the form, which we objected to in our hope to keep it uniform, and they got very indignant. They brought down their records and they showed that they issued 1,000 receipts a day, 29,000 bills of lading in one month. We accommodated the gentleman who came to us. We did not like to, but we did it to facilitate his business which needed a slight variation of the form. Now, the transactions which these gentlemen refer to—I have not seen the statements of figures and the total amount of money that has been involved in these lists in these fraudulent cases which they mention—but you must know how infinitesimal they would be could you have convenient at hand the gross revenue receipts of the United States for a year. You would see how infinitesimal they were if you could have at hand the total amount of loss or damage claimed paid by the railroads in the final classification territory for one year.

Mr. STEVENS. Then why should they object so strenuously?

Mr. McCAIN. The carriers?

Mr. STEVENS. Yes.

Mr. McCAIN. There are certain features of this that I am not so sure would be good for the carriers from my own standpoint, but there are certain other legal features which I mentioned this morning, the question of placing the responsibility on the carrier for the acts of his agents under all circumstances; I am not prepared to pass on that. But the point I did make, or wanted to make, or tried to make, was that you have got a bill here that should be tried, and it was freely stated and understood that it was a tentative measure, after a great deal of consideration and thought, and after this has been tried I have thought that possibly this or something taking its place can be enacted into law, which will become prominent and the standard bill of lading governing in the United States. There are a lot of state laws, as I understand, to be reconciled with the act to regulate commerce in this connection, which ought to be undertaken.

Mr. MANDLEBAUM. Mr. Chairman, I am not a banker, neither am I a consignee, and I am surprised to hear here for the first time about the credit list that the railroads have among themselves. I most decidedly deny the railroads the right to make any credit for me as long as they understand——

Mr. STEVENS. That has nothing to do with this bill.

(Thereupon, at 3.45 o'clock, the subcommittee adjourned.)

The following table was submitted, and is here printed in the record in full as follows:

State statutes covering (1) false bills of lading, (2) unmarked duplicates, (3) delivery without surrender of bill.

[Blanks indicate no provision.]

State (or Territory etc).	False bills.		Unmarked duplicates.		Delivery without surrender.	
	Criminal penalty.	Civil liability.	Criminal penalty.	Civil liability.	Criminal penalty.	Civil liability.
Alabama	Not exceeding $1,000, not more than 5 years.	Carrier liable to any person injured thereby for all damages, immediate or consequential, resulting therefrom.	Same	Same	Same. Property taken from carrier under legal process excepted. Bills marked "Not negotiable" exempted.	Same.
Arizona	Not exceeding 5 years, $1,000, or both.		Not exceeding 5 years, $1,000, or both. Excepts property taken by process of law.			
Arkansas	Not exceeding 5 years, $5,000, or both. Not applicable to bills marked "Not negotiable."	Persons aggrieved have action at law against person or corporation issuing bill to recover damages. Not applicable to bills marked "Not negotiable."	Same	Same	Same. Surrender not required where property replevied or removed by operation of law. Carrier may take valid bond in place of surrender.	Same.
California	Not exceeding 5 years, $5,000, or both.		Not exceeding 5 years, $1,000, or both.			
Colorado						
Connecticut						
Delaware						
District of Columbia.						
Florida	Issue of false vessel bill to defraud insurer punishable by fine or imprisonment.					
Georgia						
Idaho						
Illinois						
Indiana						
Iowa	False vessel bill to defraud insurer punishable by fine or imprisonment.					
Kansas						

STATEMENT OF CHARLES J. FAULKNER ON BEHALF OF THE SOUTHERN AND OTHER RAILROADS IN REFERENCE TO COMMITTEE SUBSTITUTE FOR H. R. 14934.

Under the courtesy extended by the subcommittee having under consideration committee substitute for H. R. 14934, I beg leave to submit the following objections to the passage of said bill:

1. Briefly stated, after four years, the carriers, shippers, bankers, and Interstate Commerce Commission have been earnestly applying themselves to the solution of the problem of securing a uniform bill of lading upon which to rest the transportation business of the country. By mutual concession a bill has been formulated which it was supposed was satisfactory to all interests in official territory, and has received the approval of the commission. In southern territory the agreement has been reached, with the approval of the commission, with a slight modification of the bill applicable to said territory, but necessary because of the peculiar conditions.

In official territory it was recommended by the commission to go into effect the 1st of November, 1908. The time was subsequently extended to the 1st of January, and on application of the shippers, who print their own bills of lading, the time has been further extended to the 28th of February, 1909.

The commission in its report to Congress shows its appreciation of the difficulties growing out of this subject and of the necessity of considering the approved bill of lading as merely tentative. We understand this expression to mean that it is its intention to watch the practical workings of its provisions and conditions with a view of finally determining whether, in the interest of the traffic of the country, some of the conditions should be modified or new conditions added. When this test has been made and the tribunal appointed to guard the interest of the public has become satisfied from experience of the exact terms that should be embraced in this contract of transportation, it seems to us that it would then be sufficient time to embody in legislative enactment conditions affecting the bill of lading and the liabilities, as well as the obligations of the carrier and the public.

We have no doubt that the commission recognizes the fact that the carriers and parties affected can by voluntary action meet the conditions which will satisfy all parties interested, which Congress, under the power "to regulate commerce," would not have the authority to impose upon the carrier.

With the approval of the conduct of the carriers, as shown in the report of the commission to Congress in their effort to solve this most difficult problem, we would respectfully submit to your committee the wisdom of allowing this subject to remain free from statutory restrictions until such time as, in the judgment of Congress or of the Interstate Commerce Commission, experience as to this new form of bill of lading shall convince them of the necessity of congressional action.

2. Permit me to suggest certain criticism to the subcommittee's bill, in case it should be deemed wise by the committee to consider favorably the report of this bill.

a. On page 1, in line 4, is it your purpose to make the provisions of the proposed statute applicable to carriers by water as well as by land; and if so does the language of the section carry out that intention?

b. On page 1, in line 13, what is the necessity or meaning of the language, "or may be," and is there any reason why that language should be used in the thirteenth line and omitted after the word "is" in the seventeenth line?

c. On page 2, lines 3 and 4, is it necessary or wise to limit the length of the bill of lading to 11 inches? If practicable, it would be the desire of the roads, I think, to have the bill of lading as provided for in the bill, but they have realized that it would be impracticable in some instances to make a fixed and unalterable rule as to the length of the bill of lading.

d. On page 5, lines 2 to 10, the proviso authorizes the carrier to deliver the property where the order bill of lading can not be immediately surrendered upon the condition stated in the bond. We think there should be an amendment after the word "demand," on line 9, in the disjunctive, authorizing the carrier to demand of the consignee not only the bond provided for, but also, if he deems it proper, a certified check covering the value of the property.

e. On page 5, in line 2, after the word "delivered," there should be a provision that the carrier should not be required to preserve the original canceled order bills of lading as evidence of their surrender or delivery of the shipment at destination for a period longer than four months.

f. Page 6, section 7, is exceedingly objectionable when construed under the law applicable to its language. The first part of this section sanctions material alterations, additions, or erasures in either form of bill of lading, and whether done fraudulently or otherwise, holds the carrier responsible, notwithstanding those alterations, additions, or erasures, according to the tenor of the bill of lading. This language can only apply to a bill of lading that has been signed and delivered to the shipper. There could be no alteration, addition, or erasure in legal contemplation to a bill of lading before it became effective. If the language in the printed form was altered, or conditions written in the blank space, added prior to delivery, it would simply be a part of the original contract, and consequently could not be construed into an alteration, addition, or erasure.

g. The proviso, however, to the seventh section is still more objectionable. It protects a bill of lading after it has been delivered by the carrier to the shipper and passed beyond the control of the agent of the carrier who signed the bill, and even beyond the possession of the shipper who received it, by enforcing any alteration, addition, or erasure made under such circumstances upon the bill of lading, if any "officer, agent, or servant" of the issuing carrier indorses his signature to the alteration, addition, or erasure, with the consent of the holder thereof.

This would authorize any holder of this paper acting in collusion with any "officer, agent, or servant" of the carrier who issued the bill of lading, to make valid and effective any change, modification, or stipulation, contradicting and repudiating all the conditions, or any of them, embraced within the bill of lading. This would be certainly an incentive to crime, and would be a prolific source of fraud upon the carrier, taken in connection with the provisions found in section 5 of this act.

h. We suggest that there should be a new provision requiring all packages of freight, carried under an order shipment, to be marked plainly with the name of the consignee, the destination of the package,

and the fact that it moves under an order shipment. The bill is predicated upon the supposition that the bill of lading, or a copy of it, accompanies the freight, which is not a fact, as the whole transaction rests upon the waybill, and should the agent leave the words "order of" off of the waybill, the destination agent would handle the shipment as a straight consignment.

i. On page 4, in line 9, after the word "lading" insert the word "knowingly." This makes the section in harmony with the provision on page 4, in line 3, which imposes a penalty of not exceeding $5,000 or imprisonment not exceeding five years, or both, upon the carrier, officer, or agent who issues a false or duplicate bill of lading in violation of section 4.

j. On page 6, should not the proviso in line 9, after the word "lien" be enlarged, by inserting the language "or lost or destroyed by acts of God or the public enemy," and after that expression, should there not a further provision be added, "or where said property has been delivered by the carrier in accordance with the express provisions of the bill of lading?" The necessity for these provisions is the fact that the proviso on page 6 does not limit the excuse to the acts alone of the carrier, but to the acts of third parties as well, where the goods are replevied or removed by operations of law, and it might be construed by the courts as being a limitation upon the right of the carrier to be relieved of a delivery without a surrender of the order bill of lading to the exceptions made in the statute, and to no other exceptions.

3. One of the most drastic and far-reaching provisions of the committee substitute is found on line 7, and ending with the word "therein" on line 14, page 4. It is as follows:

And every carrier who himself, or by his officer, agent, or servant authorized to issue bills of lading, issues a false or duplicate bill of lading in violation of the provisions of section 4, shall be estopped, as against all and every person or persons injured thereby who shall acquire any such false or duplicate bill of lading in good faith and for value, to deny the receipt of the property as described therein.

To determine what is a false bill of lading under this provision, we have to refer back to section 4, which provides—

That it shall be unlawful for any carrier, or for any officer, agent, or servant of a carrier, to issue an order bill of lading, or a straight bill of lading, as defined by this act, until the whole of the property as described therein shall have been actually received and is at the time under the actual control of such carrier to be transported.

What is the extent of the meaning of the language in the fourth section: "Until the whole of the property as described therein shall have been actually received and is at the time under the actual control of such carrier to be transported?"

It is not subject to the construction (the last quoted language having reference to the issuing of a bill of lading) that any false statement in the bill of lading as to the receipt of goods, the quantity of the goods, and the condition of the goods (if these subjects are all "described" in the bill of lading) renders the bill of lading a false bill? Does the language of the fourth section in describing a false bill limit it to a receipt of the property described therein, and even should it be so construed, would not it then bind the carrier as to quantity, the number of packages, and their weight? If so, a mistake in number or weight would constitute a false bill, and under the clause quoted in section 5, on page 4, would estop the carrier

from showing the actual number of packages received, or the weight of the shipment of grain or other products, "as described therein."

We feel that the language of the fourth section must have reference to the particular terms of a bill of lading when it says, "the whole property as described therein shall have been actually received," and that view is strengthened by the language of the fifth section, to which reference has been made in using the language "to deny the receipt of the property as described therein." It is usual for bills of lading to describe the quantity, the description, the condition, and the weight of the goods, and a failure to properly state the facts as to any of these elements, however slight the variance, constitutes the bill a false bill. The clause quoted above from the fifth section, on page 4, would estop the carrier from showing the true facts and revolutionize the entire law upon that subject as it exists.

The carrier is estopped to deny any of these facts when in the hand of a consignee or indorsee for value.

The universal rule has been that a bill of lading with appropriate recitals may be sufficient evidence to establish prima facie the shipment of goods, their kind and quality, and their condition at the time of shipment. (Lady Franklin, 8 Wall., 325; Northern Transp. Co. *v.* McClary, 66 Ill., 233; The Adriatic, 16 Blatchf., 424; Nelson *v.* Woodruff, 1st Black., 156; Hastings *v.* Pepper, 11 Pick., 41.)

This is the general rule where nothing is said in the bill of lading, but the authorities in all English-speaking countries have recognized the right of the carrier to use qualifying terms in the bill of lading that destroy the prima facie evidence of the facts set forth upon its face by adding to the bill "contents unknown," "conditions unknown," "contents and weight unknown."

In the case of Vernard *v.* Hudson (3 Sumn., 405), Justice Story, in delivering the opinion, where the terms had been entered upon the bill of lading, "contents unknown," said:

> Here, in the bill of lading, the words are written "contents unknown," and as the contents were not known, no presumption can arise as to the true state of the goods at the time of shipment.

In the case of Clark *v.* Barnwell (12 How., 272), in which the same qualification was put upon the bill of lading, the court, by Justice Nelson, said:

> It is obvious, therefore, that the acknowledgment of the master as to the condition of the cases, excluding any implication as to the quantity or quality of the article, condition of it at the time received on board, or whether properly packed or not in the boxes.

A very interesting case, with a full discussion of the whole subject is that of Iron Mountain Railway *against* Knight (122 U. S., 79). In this opinion Mr. Justice Matthews, on page 83, in behalf of the court, quotes with approval the decision of Mr. Justice Nelson, heretofore referred to in 12 How., 272. (See Crenshawe *v.* Pearce, 37 Fed. Rep., 432; Sears *v.* Wingate, 3rd Allen, 103; Chandler *v.* Sprague, 5th Met., 306.)

The principle upon which rests the decision that these subjects may be explained, even by oral testimony, in contradicting the bill of lading, is that these statements of the bill of lading are simply a receipt to the consignor and not a contract.

The bill we are considering fails to take into consideration the practices and methods of business in the transportation of the products of the country in failing to include a most essential provision of the English statute. Without the incorporation of such a provision in the proposed act before your subcommittee the door would be opened to the widest system of frauds upon the carrier, which would force it to readjust its entire practices in reference to the issuing of bills of lading.

These practices to which I refer are such as authorize bills of lading to be issued by an agent upon the faith and credit of the consignor in packing and loading his goods, and who fills up the bill of lading and tenders it to the agent of the carrier for signature. In large manufacturing cities the consignors are loading and shipping a large number of cars daily on tracks connecting the roads with their manufactories. They pack the articles of shipment, frequently in tight barrels and boxes, load the cars, seal them with the shippers' seal, and on faith, based upon the integrity of the business man, the agent of the carrier signs the bill of lading, descriptive of the quantity, quality, and condition of the goods. He may add "quantity, quality, and condition unknown." If our construction is true of the fourth and fifth sections, none of these matters could be controverted to show the fraud perpetrated by the shipper if the bill of lading was in the hands of a third party and acquired in good faith.

It has been the practice (and seems to have been necessary in the movement of traffic) that local bills of lading given by a carrier to a shipper, from the point of shipment to the connections with fast freight lines, are forwarded by the shipper to the carrier representing the fast freight line; by him taken up before the receipt of the goods, and a new bill of lading for the through transportation mailed to the consignor to take the place of the local bill, that time might be saved, and a bill of lading sent forward by the consignor to the consignee. Another illustration:

We find that at a terminal or junctional point, where two or more railways center, a practice has grown up between carriers (dictated by a broad public policy) known among the craft as reciprocal switching. At such points each of the carriers interested in the traffic at that terminal switch for each other, regardless of competition between them, and move carload traffic from or to enterprises located upon the tracks of either within the switching limit. The charge for this service is a nominal one, and on competitive traffic is borne by the transporting carrier. The effect of this arrangement is to make the terminals of every road at that point accessible to each of the roads and to largely remove disabilities on the part of the manufacturers or merchants in the receipt or shipment of goods over the line of any of the carriers. As soon as the car under these circumstances is ready to be moved from the point of shipment to the line over which the goods will be transported, the carrier over whose line these goods will pass is at once notified, and a bill of lading issued before the goods have actually come within the possession of the carrier for transportation, and that issues the bill of lading. This saves an average of twenty-four hours in the handling of the bill of lading, and has proven of great commercial advantage to the shipping public.

The carrier under the proposed bill is without remedy against the deliberate fraud of the shipper, under, through, and by whom any

bona fide holder for value must claim his title. Is it possible for the carriers under such conditions of liability to continue these practices, which the necessities of commerce have rendered imperative in the past?

We would respectfully call the committee's attention to the very wise provision bearing upon this subject found in the English bill of lading act of 18th and 19th Vict., chapter 111, section 3:

Provided, that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claimed.

4. The purpose of the proposed law is to make the carrier an insurer and guarantor of the acts of any of its "officers, agents, or servants" in issuing both forms of bills of lading, and to prohibit the issuing of such bills on the receipt of them from a shipper unless the property described in said bills of lading have been actually received, and at the time of the issue of the receipt and contract represented by such bill of lading are under the actual control of the carrier issuing such bill. The first question that presents itself to the mind of one considering the propriety of approving such legislation is, has the evidence before the committee shown the necessity, in the interest of the public, for the enactment of a provision of law which must so seriously change the practices of the carriers and the shipping public in the movement of traffic as illustrated briefly in our third point?

In the evidence few illustrations have been given in which the holders of order bills of lading have suffered loss by reason of fraud upon the part of the agent of the carriers. When the instances given are considered in the light of the millions of transactions occurring, covering the period of time within which they have occurred, it would not be an exaggeration to say that there can be found few, if any, commercial transactions in which so few losses have occurred relative to the amount of business transacted. If this is a correct statement of facts (which we do not think can be denied), is it the part of wisdom to enact a law that may correct these few injustices, but which will, at the same time, disorganize and revolutionize so greatly the practices which have grown up through a long number of years of experience as essential to the public interest in facilitating the movement of traffic? We respectfully submit that in the passage of laws for the protection of the rights of the public we must look to the question whether the enactment, although injurious to some, will promote the general public interest. It has never, however, been regarded as proper to base legislation upon the protection of the few at the expense of the many. We respectfully submit that this proposed bill, if enacted into law, would have that effect.

Again, we should consider before passing such a law the experience of the past and the necessity of bringing such commercial transactions into as great uniformity throughout the country as is practicable. From the earliest history in this country to the present time, the courts have recognized that a bill of lading contains two features: First, a receipt, and, second, a contract. All adjudications upon bills of lading have rested upon the application of the principles of law to one or the other of these features. At the present time we are only interested in considering the feature of a bill of lading that

is held to be a receipt. In this respect it is simply a symbol of the property receipted for, and whilst in transit the title to the goods represented by it may be transferred by indorsement and delivery. (Shaw *v.* R. Co., 101 U. S., 587.) Neither in England nor in this country have they ever been regarded as negotiable within the meaning of the use of that term as applied to commercial paper, such as bills of exchange and promissory notes, which are the representatives of money. Can these qualities be impressed by legislation of the Congress upon this feature of a bill of lading that represents simply the receipt of the property? Can a greater effect be given to the transfer of the symbol than can be given to the thing which it represents, tangible, personal property? As stated in the case of Strollen Werck *v.* Thatcher (115 Mass., 224) by Gray, C. J.:

A bill of lading even when in terms running to order or assign, is not negotiable, like a bill of exchange, but a symbol or representation of the goods themselves; and the rights arising out of the transfer of a bill of lading corresponds not to those arising out of the indorsement of a negotiable promise for the payment of money, but to those arising out of delivery of the property itself under similar circumstances. Shaw *v.* R. Co. (101 U. S., 564 and 565).

As a result of this construction of a bill of lading by the courts, it has been universally held that the transfer of the bill of lading can give no higher title than would the transfer of the property by the same person. As a general rule, it might be properly said that where bills of lading are made quasi negotiable by statute, the holder in the absence of either title to the goods, or authority to transfer them, can not by a transfer of the instrument pass the right of title of property to the goods, even to a bona fide purchaser for value. He can convey no greater right than he himself has. Pollard *v.* Vinton (105 U. S., 8).

The courts have therefore held that because of these underlying principles upon which rest a bill of lading, that an agent, who issues a false bill of lading, not having the property in possession and control, is acting beyond the scope of his authority, and does not by his act bind his principle. Mr. Justice Matthews in discussing the case of Grant *v.* Norway (10 C. B., 665), in the case of Iron Mountain Ry. Co. *v.* Knight (122 U. S., 86), adds an additional reason, upon which he rests the principle that an agent who receipts for goods not actually in the possession of his principal does not bind him by that act. He said:

The ground of that decision, according to my view, was not merely that the captain has no authority to sign a bill of lading in respect of goods not on board, but that the nature and limitation of the captain's authority are well known among mercantile persons, and that he is only authorized to perform all things usual in the line of business in which he is employed. Therefore the doctrine of the case is not confined to the case where the goods are not put on board the ship.

In considering the diversity of views entertained upon the right to hold a carrier responsible for the act of the agent, in signing a bill, where the property was not delivered, and the necessity of uniformity in the decisions of the country, Mitchell, J. P., in the case of National Bank of Commerce *v.* Chicago, etc., R. Co. (44 Minn., 224), after defending the soundness of the doctrine itself, proceeded to urge the adoption by the state courts of the doctrine of the English and federal courts. He said:

It is * * * to be admitted that it requires some temerity to attack either the policy or the soundness of a rule which seems to have stood the test of experience,

which has been approved by so many eminent courts, and under which the most successful commercial nation in the world has developed and conducted her vast commerce ever since the inception of carriers' bills of lading. But on questions of commercial law, it is eminently desirable that there should be uniformity. It is even more important that the rule be uniform and certain than that it be the best one that might be adopted.

An examination of the authorities will show that the federal courts have uniformly held that the principle was not bound by the acts of the agent in fraudulently giving a bill of lading where goods had not been received, and that a large majority of the States of the Union have in the past, and do to-day, adhere to that doctrine.

Upon principle, upon experience, and upon uniformity of practice we are of the opinion that it is wiser to adhere to the law as it has been expounded in all of its varied applications to this commercial transaction in the past rather than to open up a new field for legislation and construction.

5. In considering the questions which grow out of this proposed legislation it is perhaps not necessary to discuss the right of Congress under the commerce clause of the Constitution, which confers upon it the power to regulate interstate commerce, to determine how far, under that grant of authority, Congress can prescribe the form of the receipt embraced in a bill of lading. But it certainly can not be considered irrelevant to direct your attention and to ask your consideration of the question whether the Congress, under this grant of power, can impose upon a common carrier chartered by another sovereignty the form of a contract which increases the power and enlarges the obligation beyond the charter rights conferred in the creation of the corporation.

The fact that carriers have to some extent voluntarily in their practices conformed to some of the provisions of this bill is no argument upon which to predicate the right of Congress, under the commerce clause, to embody in legislative enactment these practices. As stated so clearly by Mr. Justice Peckham in the case of Lake Shore R. Co. *v.* Smith (173 U. S., 697):

It is no answer to the objection of this legislation to say that the company has voluntarily sold thousand-mile tickets good for a year from the time of their sale. What the company may choose voluntarily to do furnishes no criterion for the measurement of the power of the legislature. Persons may voluntarily contract to do what no legislature would have the right to compel them to do. Nor does it furnish a standard by which to measure the reasonableness of the matter exacted by the legislature.

That a bill of lading is more than a receipt and partakes of all the characteristics of a contract there can be no doubt. Upon this question no conflict of authorities can be found, either in England or this country. The character of a bill of lading was clearly stated by Mr. Justice Miller, in delivering the opinion in the case of Pollard *v.* Vinton (105 U. S., 7). This language was approved in Iron Mountain Ry. *v.* Knight (122 U. S., 87). He said:

It is an instrument of a twofold character. It is at once a receipt and a contract. In the former character it is an acknowledgment of the receipt of property on board his vessel by the owner of the vessel. In the latter it is a contract to carry safely and deliver. The receipt of the goods lies at the foundation of the contract to carry and deliver. If no goods are actually received, there can be no valid contract to carry or to deliver. And the doctrine is applicable to transportation contracts made in that form by railway companies and other carriers by land, as well as carriers by sea.

Does not the proposed bill seek to control the effect of the contract feature of the bill of lading between the carrier and the third parties by the provisions contained in the first section under subdivisions C and D, and to this extent impose upon the carrier obligations foreign to the duties of a common carrier for hire? It is provided—

c. That the bill of lading shall contain on its face the following provisions: "The surrender of this original order bill of lading, properly indorsed, shall be required before delivery of the property."

d. "It shall not contain the words 'Not negotiable,' or words of similar import. If such words are placed on an order bill of lading, they shall be void and of no effect." Remembering the statement of Mr. Justice Miller, that the contract under a bill of lading is to "carry safely and deliver," does not the provisions above quoted go beyond the mere form of the bill of lading and affect the substance of the contract between the parties?

Under subdivision C it is sought by legislative enactment to embody in the contract two provisions in reference to the delivery of the property. First, that the original order bill shall be surrendered before delivery; second, that the order bill shall be properly indorsed before delivery of the property. These two provisions control many of the express stipulations contained in the bill of lading, as well as others that are implied by operation of law. They nullify, by these prohibitions, the stipulated or implied provisions of the bill of lading as to delivery, as to storage, and as to time of delivery. These questions are controlled by these prohibitions.

What effect is intended in the statute by the provision contained in subdivision *d,* prohibiting such a bill from containing the words "not negotiable," and declaring such words, if used, void and of no effect, must be a subject of speculation. Certainly the meaning of such a provision has not that clearness and definiteness which should always characterize a legislative enactment. There is no provision found in this proposed bill declaring either that the bill of lading shall be transferable on indorsement or delivery or that it shall have any of the characteristics of negotiability. We find no provision in the proposed law modifying the jurisdictional clause found in section 629 of the Revised Code, clause 1, prohibiting an assignee or subsequent holder of a promissory note or choses in action from suing in the circuit or district court for the United States unless his assignor or transferrer could have sued in such court, unless the instrument is made by a corporation and is payable to bearer. In such a case, of course, the instrument would be transferred by delivery and without the requirement of indorsement.

Is this an attempt to evade the constitutional restrictions on the Congress in the regulation of commerce by the framer of the bill in seeking to do indirectly that which he could not do directly? Would the courts, when called upon to construe this act, sanction such a departure by the Congress in the exercise of its legislative authority?

If we are correct in our construction of the fourth and fifth sections, as discussed in the third clause of this brief, can the Congress under the grant of power to regulate commerce change the rights of the carrier by prohibiting it, under the principle of estoppel, from showing the quantity, quality, or condition of the goods when they were received? Can the Congress, by applying the doctrine of estoppel,

change the feature of the contract ("to carry safely and deliver"), the stipulated and implied conditions of the agreement between the parties to the contract? If this can be done, it is done in the interest of one who has perpetrated a fraud upon the carrier in collusion with his agent, or in the interest of one who claims his title to the property by and through the fraudulent shipper acting in collusion with the agent of the carrier. The doctrine of estoppel should never be applied to sanction fraud and to overrule long-established principles of commercial law.

If the doctrine which has been maintained in this country for so many years, that the agent can not bind the carrier for goods not received, rested alone upon the authority of the agent to sign such a bill of lading, a plausible argument might be made for the modification of that law. But it does not rest upon that want of authority alone. It rests upon a fundamental principle of the law of agency, which, in the interest of a sound public policy, should not be modified by legislative enactment. Again we quote Mr. Justice Matthews in Iron Mountain Railway *v.* Knight (122 U. S., 86):

> The grounds of that decision, according to my view, was not merely that the captain has no authority to sign a bill of lading in respect of goods not on board, but that the nature and limitation of the captain's authority are well known among the mercantile persons, and that he is only authorized to perform the things usual in the line of business in which he is employed.

The learned judge has here presented the question more clearly than in most of the decisions. He rests the principle of protection to the carrier upon the known authority of the agent in dealing with the public. Should the Congress, though it has the power under the provisions to regulate commerce, by these indirect provisions and the doctrine of estoppel, change entirely the contract of the carrier and impose upon it these obligations and penalties in the interest of. a fraudulent shipper, or a third person holding title under such fraudulent shipper?

But is it within the power of Congress, under its grant to regulate commerce, by the use of the doctrine of estoppel, to destroy all defenses of an interstate carrier as to the character, quality, quantity, and condition of the goods, and to impress on the contract for "safe carriage and delivery" many of the principles applicable only to negotiable paper, which are by the law merchants traded in as the representative of money?

The authority of a corporation is limited by the terms contained in its charter. It is a creature of statute. The charter expresses the legislative will as to the extent of those powers. It has no other powers than those that are implied by law as necessary and appropriate to carry out the duties imposed upon it by terms of its creation. It is not a commercial agency for the issuing of bills of exchange, promissory notes, or choses in action passing by delivery. Its obligation to the public begins upon the delivery of the goods for shipment to the carrier, and its duty ends on its delivery of the property to the consignee. It can not supervise its agents, as can be done by a bank whose officer is authorized to certify checks, nor has it the trained intelligence that can be found in the banks. To impose such duties upon a carrier for the acts of its agents, scattered throughout the country, at the 60,000 stations where goods are received and shipped

would, in our judgment, be an unreasonable regulation of interstate commerce.

A very interesting case, and one which bears directly upon the questions arising under the proposed bill, is the case of the Lake Shore R. R. Co. *v.* Smith (173 U. S., 684).

The State of Michigan passed a law providing "that one thousand mile tickets shall be kept for sale at the principal ticket offices of all railroad companies in this State, or carrying on business partly within and partly without the limits of the State, at a price not to exceed $20 in the lower peninsular and $25 in the upper peninsular."

And the question presented to the court was, "Does the authority of the legislature extend in a case where it has the power of regulation and also the right to amend, alter, or repeal the charter of a company, together with a general power to legislate upon the subject of rates and charges of all carriers" authorize the enactment of such a law by a State? (690.)

The court proceeds to answer this question broadly, as follows:

It has no right even under such circumstances to take away or destroy the property or annul the contracts of a railroad company with third persons (p. 690).

The question was discussed by the court whether under the due-process clause or under the equal protection of the laws provision of the fourteenth amendment the act was unconstitutional. It held that it was. It said:

It is not legislation for the safety, help, or proper convenience of the party, but an arbitrary enactment in favor of the person spoken of, who in legislative judgment should be carried at a less expense than the other members of the community. There is no reasonable grounds upon which the legislation can be rested unless the simple decision of the legislature should be held to constitute such reason (p. 699).

It thus invades the general right of a company to conduct and manage its own affairs and compels it to give the use of its property for less than the general rates to those who come within the provisions of the statute, and to that extent it would seem that the statute takes the property of the company without due process of law (p. 691).

On page 692 the court further said:

It is stated upon the part of the defendant in error that the act is a mere regulation of the public business, which the legislature has the right to regulate, and its apparent object is to promote the convenience of persons having occasion to travel on railroads and to reduce for them the cost of transportation; that its benefit to the public who are compelled to patronize railroads is unquestioned. * * * The reduction of rates in favor of those purchasing this kind of ticket is thus justified by the reason stated.

The right to claim from the company transportation at reduced rates by purchasing a certain amount of tickets is classed as a convenience. As so defined, it would be more convenient if the right could be claimed without any compensation whatever. But such a right is not a convenience at all within the meaning of the term as used in relation to the subject of furnishing convenience to the public. And also the convenience which the legislature has to protect is not the convenience of a small portion only of the persons who may travel on the road, whilst refusing such alleged conveniences to all others, nor is the right to obtain tickets for less than the general and otherwise lawful rate to be properly described as a convenience. * * *

The power of the legislature to enact general laws regarding a company and its officers does not include the power to compel it to make an exception in favor of some particular class in the community, and to carry the members of that class at a less sum than it has the right to charge for those who are not fortunate enough to be members thereof. This is not reasonable regulation.

The extracts from this decision measure the power of the legislatures of the States even where the corporation is created by the sovereignty enacting such laws and declare it in violation of the due-

process provision of the Federal Constitution, as found in the fourteenth amendment. The court further declares it an unreasonable regulation. It is peculiarly applicable to the bill under discussion. Is it not an admitted fact that the main purpose of this law is to provide a protection for a small class of the community, known as bankers, who negotiate and advance money upon these bills of lading?

The due process clause contained in the fourteenth amendment is a limitation upon the power of the States in the enactment of legislation. Its extent and efficacy is the same, no greater nor less, than the limitation upon Congress under the fifth amendment. A very striking expression bearing upon this subject is found in the Sinking Fund case (99 U. S., 718), in which the opinion of the court was delivered by Mr. Chief Justice Waite. He said.

The United States can not, any more than a State, interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional provisions which prevent States from passing laws impairing the obligation of contracts, but equally with States they are prohibited from depriving persons or corporations of property without due process of law.

This extract from the opinion in that case must cause the student to reach the conclusion that the rights of a corporation or individual can not under the fifth amendment be destroyed by a legislative rule of liability which imposes obligations and modifies lawful contractual relations made within the scope of charter rights.

In this connection we direct attention to the language of Mr. Justice Harlan in the Adair case, in which, in speaking of the power of the Congress in the regulation of interstate commerce as an attempt to interfere with the contractual rights of a carrier, the provisions of this proposed law are of extremely doubtful constitutionality.

6. We submit that the penalties provided in the proposed law are in conflict with the views of the Supreme Court as found in a number of cases.

It is not proposed as a law for the protection of the shipper who secures the discount of a draft by filing the bill of lading as security. It protects, in the interest of the bank, a deliberately perpetrated fraud by the shipper, not only upon the bank, but upon the carrier, sometimes through collusion with its agent and sometimes not. Between the carrier and the fraudulent shipper, whether acting in collusion with the agent or not, if the shipper was financially responsible the carrier would have recourse against him. It can not, therefore, be claimed that such a provision is in the interest of the shipper. It is to protect a small class of the community who deal for profit in such paper, with whom the carrier has no contractual relation, and to whom he is under no obligation by reason of the duties imposed upon a common carrier to carry safely and deliver the goods intrusted to it. We can not believe that the authority exists, under the clause to regulate commerce, to enforce regulations of this character, which are so unjust and inequitable, and which impose requirements beyond the scope of their charters to grant.

The court, in the Lake Shore Railway *v.* Smith, in discussing the question of the right of the State to provide by law, as a matter of regulation, the contract for the carriage of passengers under a thousand-mile ticket, placed its decision of the invalidity upon that statute, not only upon the unreasonableness of the regulation, but under the due process clause of the fourteenth amendment. (173 U. S.,

961.) The question is presented, Does the fifth amendment invalidate such provisions contained in an act of the Congress? In considering that question it is relevant to refer to the case of the Interstate Commerce Commission *v.* Chicago G. W. Ry. (209 U. S., 118), in which the court said:

It must be remembered that railroads are the private property of their owners; that while from the public character of the work in which they are engaged the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, yet in no proper sense is the public a general manager.

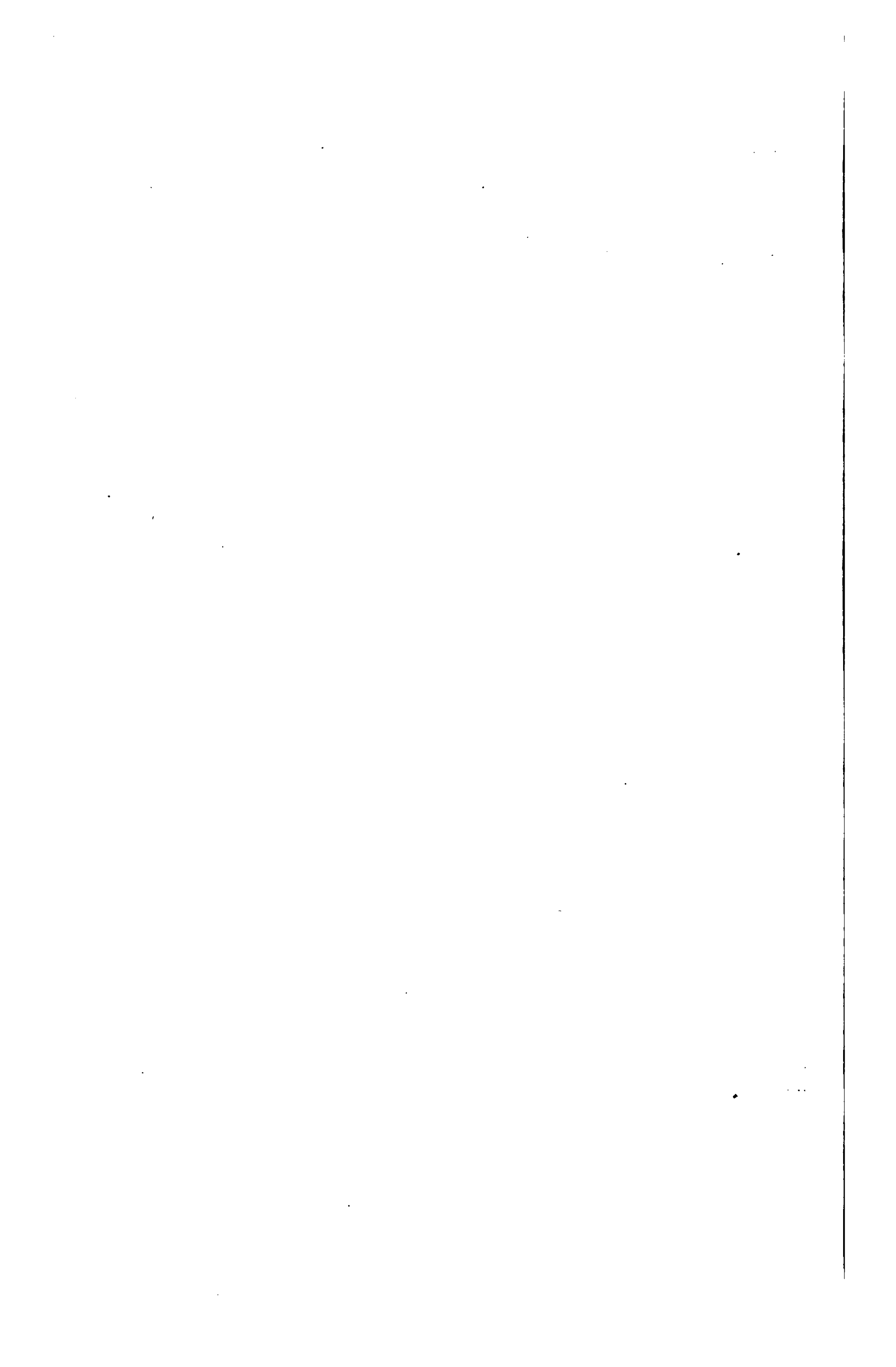
The court proceeds to quote with approval the decision of Circuit Judge Jackson in the case of the Interstate Commerce Commission *v.* Baltimore and Ohio Railroad Company (43 Fed. Rep., 37 and 50), in which the judge lays down the rules of limitation that should control the exercise of the power of regulation.

Section 3 provides a penalty of "fine not exceeding one thousand dollars or imprisonment not more than one year, or both," for failure to print the bill of lading on a particular color of paper and of a particular length and width; for putting the term "Not negotiable" on order bill of lading, and for failure to put the term "Not negotiable" on a straight bill of lading.

In the fifth section, in imposing upon the carrier, officer, agent, or servant of the carrier who knowingly gives a receipt for any goods, or any part of a consignment, not received, a "punishment by fine not exceeding five thousand dollars or imprisonment not exceeding five years, or both."

This penalty is imposed in addition to the civil liability of the carrier for the statement contained in the bill of lading to "every person or persons injured thereby who shall acquire any such false or duplicate bill of lading in good faith and for value. And in the sixth section imposing a penalty upon the carrier or officer, agent, or servant of a carrier who delivers the property described in an order bill of lading without the surrender and cancellation of such a bill, a penalty "not exceeding five thousand dollars or imprisonment not exceeding five years, or both."

This makes the penalty against the carrier, as well as against the agent who delivers the property, and is in addition to the civil liability for the value of the goods. The court in the case of Ex parte Young (209 U. S., 214) holds that while there is no rule permitting a person to disobey a statute with impunity, at least, unless for the purpose of testing its validity, where such validity can only be determined by judicial investigation and construction, a provision in the statute which imposes such severe penalties for disobedience of its provisions as to intimidate the parties affected thereby from resorting to the courts to test its validity practically prohibits those parties from seeking such judicial construction.



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HEARINGS

BEFORE THE

U.S.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES

ON

H. R. 14934

UNIFORM BILLS OF LADING

[V. 5], NO. 3

WASHINGTON
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1909

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1908
v.5

REPLY TO STATEMENT OF CHARLES J. FAULKNER IN REFERENCE TO COMMITTEE SUBSTITUTE FOR H. R. 14934 RELATING TO BILLS OF LADING.

[By Prof. SAMUEL WILLISTON and THOMAS B. PATON, of counsel in behalf of bill.]

I.

The first division of Senator Faulkner's statement is merely a plea for delay, without showing any good reason therefor. It recites the protracted negotiations which have resulted in the present uniform bill of lading—still asserted to be tentative, not yet universally adopted and amenable to change and improvement—and pleads for postponement to some indefinite future period when "experience as to this new form of bill of lading shall convince them (Congress or the Interstate Commerce Commission) of the necessity of congressional action."

But the objects sought by the committee substitute are not, in the main, matters relating to the form of the bill; they belong to the domain of legal regulation rather than that of document making and they will still so belong when there is produced the most ideal form of bill of lading which may, in the future, be evolved as a result of experience and negotiation. They are matters relating to the liability of the parties to the bill—criminal and civil liability in connection with the issue of false and unmarked duplicate bills and the delivery of goods without obtaining the surrender of order bills; also preserving the original tenor of altered bills. These are matters for legal regulation rather than for regulation by contract provision in the bill itself.

It is impossible to provide by clause in the bill of lading the criminal penalties provided in the committee substitute; nor is it practicable or effectual, even conceding the carrier willing, to provide by similar provision that if the bill is issued without goods it shall nevertheless be binding, for wherever the law holds that the agent can not bind a carrier upon a bill for which no goods have been received, the agent's signature to a false bill would not bind the carrier to such a liability provision any more than it would to any other provision therein.

With bills or notes as well as quasi negotiable instruments, it is the law, and not any contract provision in the bill itself, which provides rules governing the liability of the maker to bona fide holders where issued without consideration by one authorized to issue the instrument in the maker's name in regular course of business; such instruments are not encumbered with all the legal rules which govern rights and liabilities of parties in connection with the document, and it would seem clear that no matter how long a time is taken to perfect a bill of lading, the matters mainly covered in the committee's substitute bill are subjects solely for legal regulation.

It is therefore submitted that the plea for further delay, based on the fallacy that the provisions of the committee substitute can be regulated by the bill itself, is not well taken.

The few matters in the committee substitute governing form of the bill are fundamental regulations relating to the safeguarding and use of the document, the necessity for which has been demonstrated.

These are section 1 (*a*) (*b*) (*c*) (*d*) as to order bills and section 2 (*a*) (*b*) as to straight bills:

Section 1 (*a*). That in connection with the name of the person to whose order the property is deliverable the words "order of" shall prominently appear in print on the face of the bill, thus: "Consigned to order of ———."

The printing of the words "order of," while a requirement first introduced by the recommendation of the Interstate Commerce Commission promulgating the new forms of bills of lading, is vitally important to the safety of the bill, because it prevents the easy alteration of a straight bill to an order bill, after its issue, by the mere addition of such words as "order of and notify" or "or order" in connection with the name of the consignee. It is impossible that experience in the use of the new forms will call for any change in this requirement.

Section 1 (*b*) requiring printing of the bill on yellow paper of a certain size was eliminated in committee as more appropriate to administrative regulation than to legislative enactment.

Section 1 (*c*), which requires the insertion of the provision that "surrender of this original order bill of lading properly indorsed shall be required before delivery of the property," is no novelty.

This provision is not only contained in the uniform order bill recommended by the Interstate Commerce Commission, but a similar provision has been contained in the order bills in general use for many years.

The requirement of surrender of order bills, properly indorsed, before delivery of the property has long been the custom upon which the use of order bills as instruments of credit is based, and to depart from this requirement would, of necessity, involve the entire cessation of the practice of paying out money on the faith of such documents, both by consignees and by purchasers.

There can therefore be no possibility that future experience will require any change of the language of the bill in this particular. The importance of it justifies the enactment into law, with appropriate penalty, the well-settled custom.

Section 1 (*d*) prohibits the insertion in order bills of the words "not negotiable" or words of similar import, and makes void any such words if inserted.

The use by carriers of these words on order bills has been a fruitful source of litigation and uncertainty as to the legal effect of the document. Originally not appearing thereon, they came to be generally so placed on the bill to avoid the effect of certain state statutes which required the surrender of all bills of lading except those marked "not negotiable." But these words, as used on order bills, threw doubt upon the right of any holder other than the original party, against the carrier if he delivered the property without taking up the document. Without such a prohibition it is in the power of

the carrier, by inserting these words upon "order bills," to make such instruments, so far as delivery is concerned, of no more value than straight bills.

Furthermore, the insertion of such words upon order bills has a most mischievous result, owing to the different views taken by the courts on their effect as between successive holders.

Section 2 (*a*) was eliminated in committee.

Section 2 (*b*) requires that a straight bill shall have prominently stamped upon its face the words "not negotiable."

The object of this requirement is that a straight bill may be readily distinguished from an order bill, both by the purchaser and consignee and by the railroad agent. It simply carries out the recommendation of the Interstate Commerce Commission. The practice of stamping these words upon bills of lading has been the practice of carriers for years under statutes in many States, and now that the practice has been inaugurated of issuing straight and order bills on separate forms it is highly desirable to emphasize the distinction between the two classes of documents. It is impossible that future experience will make it undesirable to abolish the distinction between straight and order bills.

There is no ground, therefore, for the plea for delay based on the view that the few matters relating to the form of the bill should not be enacted into law until the forms recommended by the Interstate Commerce Commission have been tested by future experience.

II.

The second division of the statement proceeds on the view that the committee substitute will be favorably reported and makes certain suggestions and criticisms (*a–j*) with respect to the wording of particular clauses. These will be taken up seriatim.

a. (Page 1, line 4.) It is asked if it is the purpose to make the proposed statute applicable to water as well as to land carriers; if so, does the language of the section carry out the intention?

H. R. 14934, of which the committee print is a substitute, was introduced in the Sixtieth Congress, first session, as an amendment to the act to regulate commerce. By section 1 of that act its provisions apply to carriers by water as well as by rail, or carriers engaged in the transportation of property partly by rail and partly by water.

The committee substitute itself is applicable to "any common carrier, railroad, or transportation company" who issues a bill for the transportation of property "from a point in one State to a point in another State or from a point in the United States to any foreign country."

The bill therefore is applicable to water carriers.

b. (Page 1, line 13.) The words "or may be," though not of vital importance, were inserted to cover the possible case where the carrier by the terms of the bill of lading is permitted to make delivery to the order of a certain person but not absolutely so required. For example, a bill of lading deliverable to order of A or B in the alternative. The words "or may be" should also be inserted in line 17, page 1, after the word "is."

c. (Page 2, lines 3 and 4.) It was agreed at the last hearing and decided by the committee that lines 3 and 4 (constituting subdivision

B of section 1), as well as lines 24 and 25 (constituting subdivision A of section 2), providing color of paper and size of bill, should be omitted.

d. (Page 5, lines 2 to 10.) This makes it lawful for the carrier to take a bond in lieu of surrender of the bill or indorsement of partial delivery. The suggestion is that there be added a provision authorizing the carrier to demand not only a bond, but also, if he deems proper, a certified check for the value of the property.

There is no objection to an amendment which will make it lawful for him to take either a certified check or a bond.

e. (Page 5, line 2.) The addition of a provision is suggested that the carrier should not be required to preserve as evidence the order bills which have been surrendered and canceled for a period longer than four months. There is no objection to such a provision except that if an express time limit is inserted it should be sufficiently long as not to work injustice to parties who might find it necessary to resort to such documents as evidence. As the proposed act now stands, there is nothing which would prevent the carrier destroying the bill immediately upon surrender and cancellation.

f. (Page 6, section 7.) Objection is made to the main provision as to the effect of alteration which precedes the proviso. It is asserted that it sanctions material alterations, fraudulent or otherwise, and holds the carrier responsible, notwithstanding the alterations, "according to the tenor of the bill of lading." The provision does not sanction such alterations, but it provides that if made they shall be without effect and the bill will be valid according to its original tenor.

It does not bind the carrier in any way according to the provisions of the bill as altered; simply according to the provisions of the bill as originally issued. It modifies the rule of the common law that material alteration destroys the bill completely.

g (Page 6, line 17.) Greater objection is made to the proviso, in that the issuing carrier would be bound by any act of his officer, servant, or agent in collusion with the shipper or holder in changing any of the terms of the delivered bill of lading and noting the change over his signature; that it would open the door to the perpetration of fraud upon the carrier by his agent, in collusion with the shipper or holder.

The proviso is designed to make an alteration valid and binding when made in the proper way; that is to say, by consent of both parties—on the one hand, the holder of the bill; on the other, the issuing carrier, whose officer, agent, or servant makes the alteration in his behalf and indorses and signs it on the bill. The bill might be issued for 50 bales of cotton and after delivery, upon discovery that 60 bales had been received, the bill could be altered by the shipper or holder tendering it to the agent, the agent changing the amount or quantity from 50 to 60 and validating the alteration by his signature. It is to be noted that this can only be effected when done by the "issuing carrier or his officer, agent, or servant in his behalf."

There is no objection to modifying this so that it shall more clearly specify that the only agent who can bind the carrier to such alteration is an agent of the issuing carrier who is authorized to issue bills of lading. This point was brought out at the hearing and such modification proposed in the argument by Professor Williston, who suggested that after the word "servant," in line 20 of page 6, there be

inserted "authorized to issue bills of lading," so that it would clearly appear that the alteration to be binding must be indorsed and signed by the "issuing carrier or his officer, agent, or servant authorized to issue bills of lading in his behalf," and that no other officer, agent, or servant of the issuing carrier would have power so to do.

As thus modified the proviso should stand. There is no more danger to the issuing carrier that his officer, agent, or servant will defraud him by altering a bill of lading after he has issued and delivered it than there is that the agent will issue a fraudulent bill in the first instance. In fact, it would be a simpler process to issue a fraudulent bill than to first issue a genuine bill and then fraudulently alter it.

h. (Suggested new provision.) Suggestion is made that there should be a new provision requiring all packages of freight, carried under an order shipment, to be marked plainly with the name of the consignee, the destination of the package, and the fact that it moves under an order shipment.

Such a provision would be for the protection of the carrier against mistake in delivering an order shipment without taking up the bill, supposing it to be a straight consignment. It would seem that the carrier himself might either mark the goods in the way suggested without the necessity of a law to that effect or might require, as a condition of issuing an order bill, that the shipper should so mark the goods.

i. (Page 4, line 9.) It is suggested that after the word "lading" there should be inserted the word "knowingly" to make the section harmonize with the provision on page 4, in line 3, which imposes a criminal penalty for the issue or transfer of a bill of lading "known" to be in violation of section 4.

But the word "knowingly" is designedly omitted from page 4, line 9. While to incur criminal punishment the issue of a false bill must be knowingly done, for the purpose of civil liability of the carrier to a bona fide holder who advances value on the faith of the bill, he should be protected not only in cases of fraud, but where, by mistake of the carrier or his agent, a bill is so issued contrary to the requirements of section 4.

j. (Page 6, line 9.) It is suggested that the proviso exempting certain cases from the requirement of the delivery without surrender of the bill be enlarged by including cases where the property is "lost or destroyed by act of God or the public enemy" and cases "where said property has been delivered by the carrier in accordance with the express provision of the bill of lading." The reason given is that the proviso might be construed as relieving the carrier from delivery without surrender only in those cases specified therein, and in no other cases.

It is submitted the suggested amendments are not necessary. Section 6 prohibits delivery of the goods without requiring surrender of the order bill, or indorsement in case of partial delivery, and permits a bond to be taken in lieu of surrender. The proviso excludes from the application of such provisions cases (1) where the property is replevied or removed from the possession of the carrier by operation of law; (2)—added at committee hearing—if the shipper was not in lawful possession of the property at the time of shipment; (3) where the property has been lawfully sold to satisfy carrier's lien; (4) in case

of sale or disposal of perishable, hazardous, or unclaimed goods in accordance with law or the terms of the bill of lading.

These cases excluded, the prohibition of delivery without surrender would be applicable to all other cases of delivery or partial delivery; but clearly losses by act of God, the public enemy, or from any of the other causes specified in section 1 of the conditions of the uniform bill are not a "delivery" of the goods within the meaning of the prohibition. They are losses, not deliveries, and the holder of the bill takes it subject thereto. Furthermore, the insertion of the suggested language that the provision prohibiting delivery without surrender shall not apply "where said property has been delivered by the carrier in accordance with the provisions of the bill of lading" might enable the carrier to nullify or impair the force and value of the prohibition itself by inserting clauses in the bill permitting such delivery.

III.

The provision of section 5 estopping the carrier who "issues a false * * * bill of lading in violation of the provision of section 4" to "deny the receipt of the property as described therein" is criticised; section 4 making it unlawful to issue a bill "until the whole of the property as described therein shall have been actually received and is at the time under the actual control of the carrier to be transported."

The estoppel is to deny the receipt of the property "as described therein" and the word "as" has an important meaning in this connection, the effect of which is ignored in the criticism. "As" means "to the extent or degree of or in which; in the manner in which; like." (Webster.) When, therefore, a bill of lading is issued coupled with a qualification concerning the quantity, weight, quality, or condition, such as "shipper's load and count," "weight subject to correction," "contents and condition unknown," or other qualifying terms, these become part of the description, and the carrier is only liable according thereto; that is, "to the extent or degree or in the manner described." In other words, if the bill is for "1,000 boxes of crackers, shipper's load and count," and there are only 500 boxes in the shipment, the carrier would not be estopped to deny that he received 1,000 boxes. In such case the carrier's receipt and description would be substantially this: "I have received certain boxes, said to be 1,000 in number, but I have had no opportunity to make an actual count and have relied on the shipper for this statement."

The only estoppel would be to deny the receipt of the goods "as" thus described; but on such description the carrier would be liable only for what he received. If, however, the bill should acknowledge the receipt of 1,000 boxes without any such qualifying terms and the carrier has only received 500 or 100 or none, then he would be estopped to deny to a bona fide holder the receipt of 1,000 boxes as described.

The code of Alabama makes it unlawful for a carrier to issue a bill of lading for property unless such property has been "actually delivered to him or placed under his control," and provides that if any carrier "not having received things or property for carriage" shall give a bill of lading as if such things or property had been received the carrier "is liable to any person injured thereby for all damages, immediate or consequential, therefrom resulting." (Secs. 6132,

6136.) Under this statute, which is very similar to the provisions of the committee print, it has been held that the carrier who issued a bill acknowledging the receipt of 25,637 pounds of cotton when only 14,305 pounds were actually received was not liable for short weight to a consignee who paid a draft on the faith of the bill, the bill containing the words "contents and condition of contents of packages unknown." The court held that where a bill of lading contained a saving clause, as in this case, the carrier was not liable for the deficiency of weight, quoting the language of Lord Mansfield, that "if the master qualified his acknowledgment by the words 'contents unknown' he acknowledges nothing." (Alabama Great Southern Railway Company *v.* Commonwealth Cotton Gin Company, 42 So., 406.)

It seems reasonably clear that the language of the committee print would not bind the carrier as to weight, quantity, or quality stated in the bill when coupled with qualifying language.

It is further objected that there are practical difficulties in the proposed requirement that goods must be received before bills of lading are issued for them, namely, that such requirement is inconsistent with the practice that has grown up for connecting carriers to issue bills of lading for goods already delivered to the initial carrier but not yet in the hands of the connecting carrier who is called upon to issue another bill of lading therefor.

This may be answered, first, that the difficulty will be wholly eliminated if the initial carrier issues a through bill of lading for the whole transit. This is becoming more and more the practice, and it is desirable for many reasons of convenience to encourage it.

The strongest argument, however, for the feasibility of the proposed provision is that similar provisions are in successful operation in a number of States. It must be assumed that in such States the carriers have found it possible to conform their practice to the requirements of the law. For example, the statute of Arkansas provides:

No * * * forwarder or officer or agent of any railroad, transfer or transportation company or other person shall sign or give away any bill of lading * * * for any merchandise or property by which it shall appear that such merchandise or property has been shipped on board of any railroad car or other vehicle unless the same shall have been actually shipped and put on board and shall be at the time actually on board or delivered to such * * * car or other vehicle or to the owner or owners thereof, or to his or their agent or agents, to be carried and conveyed as expressed in such bill of lading. (Kirby's Digest, sec. 528.)

Any * * * forwarder or other person who shall violate any of the provisions of this act shall be deemed guilty of a criminal offense * * * (maximum $5,000 fine; five years imprisonment) and all and every person or persons aggrieved by the violation of any of the provisions of this act may have and maintain an action at law against the person or persons, corporation or corporations violating any of the provisions of this act, to recover all damages which he or they may have sustained by reason of any such violation as aforesaid * * * (Id., sec. 531.)

The Louisiana statute (acts of 1868, secs. 5 and 7) is identical with the above.

A full list of the States wherein civil or criminal liability is imposed for the issue of false bills of lading, unmarked duplicates, and for delivering goods without the surrender of such bills is found in Table A, annexed hereto.

The law in foreign countries governing this subject, as shown by the statement in Table B, annexed hereto, is also generally in conformity with the provisions of the committee print of the proposed bill.

IV.

Objection is made that there is insufficient evidence of the necessity of the proposed legislation because losses are few, and to remedy them will disorganize existing practices. While but few specific individual losses, comparatively speaking, have been shown before the committee these are typical of a very large number, of which evidence could be produced if necessary. The great number of decisions involving losses of this character and the numerous statutes enacted to remedy the situation are evidence enough of the gravity of the evil. In fact, the risks connected with the paying of drafts on faith of bills of lading are regarded as so great by members of commercial exchanges that action has been contemplated by a number of such exchanges to refuse to honor such drafts unless the bill of lading is safeguarded by law and made good for what it purports. If the consignee refuses to pay the draft, the bank at the shipping point will refuse to discount it, and this will deprive the small shipper all over the country of the means necessary to carry on his business, the result of which will be that the business of purchasing from the producer and of shipping products will come under the control of large interests and monopolies, to the detriment of both producer and consumer.

It is asserted that the enactment of the committee substitute will disorganize and revolutionize railroad practices in the movement of traffic. It is highly desirable that certain of these business practices, as illustrated, for example, in the evidence given by Mr. Droste and other witnesses, should be revolutionized. It was shown to be a common practice of many railroad agents, in some cases apparently with the tacit assent of superior officials, to favor the shipper by issuing to him the bill of lading prior to receipt of any goods that he might use it as collateral to raise money, purchase his goods, and make the shipment. The only cases where there is apparently legitimate reason for issuing the bill of lading before receiving the goods, which counsel for the railroads has been able to suggest, have been referred to under the preceding heading.

Plea is also made that the existing judicial law be adhered to, that the principal is not liable for the act of his agent in issuing the fraudulent bill of lading. It is, of course, admitted that this is the present judicial rule as adopted by a majority of the courts. But modern conditions now call for a change of the law in this particular. Under the existing rule the irregular and fraudulent practices of issuing bills of lading without receipt of goods to the great damage of innocent purchasers have full sway. Such practices impose no burden upon the carrier within whose power alone it rests to correct the situation.

If, to the contrary, the carrier is held liable, the tendency will be to correct these practices. The carrier will discipline or discharge an agent whose fraud, or carelessness, or generosity to the shipper, induces him to issue a false bill. The apprehension of such consequences will tend to promote a higher degree of vigilance and honesty upon the part of the agent.

The existing judicial rule, as shown by counsel for the railroads, is grounded on the theory (1) that the agent has no authority to sign a bill of lading where no goods are received and (2) that the limitations of the agent's authority are well known to mercantile persons. But this rule does not now meet the necessities of modern commerce.

To do business at the present day upon such theory requires every consignee who pays money upon the faith of a bill of lading, though he may be a thousand miles distant from the point of origin, to first examine and see that the goods are in the carrier's hands before making payment upon faith of the document, and compels every bank which purchases a draft upon faith of a bill of lading to do likewise things impracticable if not impossible. Modern commerce can not now be safely carried on under such conditions; and yet, as business is now conducted, payments for shipments of products are necessarily made upon faith of the bill of lading itself, as representing the goods, without the possibility of seeing the property itself. Present day transactions are conducted largely on faith of the integrity of the bill of lading as an instrument of credit, and as business conditions make this necessary, the law should conform to existing practices and keep pace with the progress of civilization.

It is asserted that this legislation will be for "the protection of the few at the expense of the many." But the protection is asked for hundreds of thousands of shippers, consignees, and other persons relying on the integrity of bills of lading as against favoritism, carelessness, or fraud of the carriers, who are few in number when compared with the great number of persons who must rely on bills of lading. The proposed legislation therefore will protect the many as against the few.

V and VI.

These subdivisions raise constitutional questions and will be considered together.

There are just two grounds which might conceivably be urged for holding this proposed legislation unconstitutional:

(*a*) It is not within the power granted in the Constitution, because it is not a regulation of interstate and foreign commerce.

(*b*) It is within the prohibition of the fifth amendment of taking property without due process of law.

Both of these grounds are suggested in the argument of counsel for the railroads.

(*a*) It would seem clear that this legislation is within the power granted by the interstate and foreign commerce clause of the Constitution, because a bill of lading is itself a contract to carry goods from one State to another, as well as a receipt. It can hardly be contended that executory contracts of interstate commerce are not included within the powers of the National Government. A bill of lading, where no goods have been received, is at least a contract to carry the goods referred to in the document.

Further, it is within the power of Congress to protect genuine interstate commerce by prohibiting deceptive simulations of it.

It is not because dealings in the bill of lading itself are to be protected as interstate commerce that the proposed legislation is to be regarded as constitutional. On this erroneous assumption an analogy was attempted to be drawn by counsel for the railroads between bills of lading on the one hand and bills of exchange and insurance contracts, which have been held not within the commerce clause of the Constitution, on the other. In the case of bills of lading, however, the contract relates to the transportation of goods from one State to another, whereas bills of exchange and insurance policies, if they

relate to the transportation of goods at all, do so only in a collateral way.

Congress has already, in the Harter Act, relating to ocean bills, prohibited the carrier from inserting certain clauses in the bill and has also required him to issue a bill of lading and insert therein certain statements descriptive of the goods. The criticised provisions of the committee print no more affect the substance of the contract than the requirements of the Harter Act. It is impossible to distinguish, so far as the question of constitutionality is concerned, the requirements of the Harter Act from those contained in the proposed legislation.

In Arkansas Southern Railway Company *v.* German National Bank, the question of the constitutionality of the state statute which prohibits delivery except upon surrender of the bill (Kirby's Dig., sec. 530) and also imposes a criminal penalty for violation and civil right of action to persons aggrieved (id., sec. 531) was involved. The carrier delivered cotton without surrender of the bill, which was held by a bank. The shipment was interstate and the bill was to shipper's order. The bank had judgment. It was contended that the statute referred to was in conflict with the commerce clause of the Constitution. But the supreme court of Arkansas held that in the absence of congressional legislation upon the subjects covered by the statute the States had power to enact such legislation. The court said:

> We have made investigations for, and have not found, statutes of Congress upon the subject-matter of sections 530 and 531 of Kirby's Digest. These statutes do not impose any burdens upon interstate commerce, but are in aid of it to the extent that they provide for the enforcement of duties and the protection of rights already existing; and are useful and necessary legislation, and are valid, in the absence of Congressional legislation inconsistent with them. (Citing R. R. *v.* Fuller, 17 Wall., 560; Gulf, etc., Ry. Co. *v.* Heffley, 158 U. S., 103; Nashville, etc., Ry. Co. *v.* Alabama, 128 U. S., 96.)

This decision recognizes that statutes of the character contained in the committee substitute, relating to bills of lading for insterstate shipments, are within the commerce clause of the Constitution, but that until Congress enacts "such useful and necessary legislation" the subject is within the domain of state legislation.

(*b*) It is submitted that there is nothing in the proposed legislation which can possibly be regarded as taking property without due process of law. It is too clear for argument that public-service corporations are subject to regulation, and it is well settled that such regulation may include regulation of the kind of contract which such corporations may enter into. The Harter Act, here, also, is a clear precedent. A still more striking illustration is contained in the Hepburn law regulating rates of freight.

The case of Lake Shore Railroad *v.* Smith (173 U. S., 697) holding unconstitutional the Michigan law requiring railroads to issue thousand-mile tickets has no bearing on the question here. The chief objection to that law was that it favored certain members of the community at the expense of others, and that it took the property of the company without due process of law.

In any legislation relating to the contract which a public-service corporation may enter into, it is always pertinent to inquire whether it favors exclusively some members of the community and whether it is so oppressive as to confiscate, in effect, the property of the cor-

poration. Not only do the precedents of the Harter Act and the Hepburn rate bill make it clear that this is not true of the proposed legislation, but it is abundantly clear as an original question.

Here all persons dealing with the carrier or its bill of lading are put upon the same footing. It is urged that the provisions of the bill are exclusively for the benefit of bankers. But this is by no means the case. It is said that in the interest of the bank a deliberately perpetrated fraud by the shipper is thrown upon the carrier. It must be remembered, however, that the interest of the consignee of the bill of lading is equally vital to that of the banker; equally with the banker he advances money upon faith of the bill. The aim of the proposed legislation is not to protect a single class alone, but to protect everyone who relies on the statements contained in the bill of lading.

From a mercantile or economic point of view some one must bear the risk of the validity of the document. This person should be the carrier rather than the purchaser or pledgee of the bill, both because the carrier is responsible for its issue and because the compensation which he derives from the shipment is far greater than that of any other class. A consignee who purchases a bill of lading for 10 bales of cotton pays exactly the same amount for the bill of lading as he would pay for the cotton if it were physically delivered to him without a bill of lading. There is no concession or rebate to him where he pays the amount on the faith of the bill of lading, as a price for assuming the risk of its validity. So where the banker at a shipping point purchases a draft, with bill of lading attached as security, the amount of exchange which he receives as compensation is infinitesimal as compared with the compensation which the carrier derives as freight for transporting the goods. Take a shipment of eggs from Nashville, Tenn., to New York, for example. Upon $1,000 value the exchange charge of the banker who purchases the draft is only $1.50, which, after deducting the value of the use of the money for the length of time before he receives its return and other incidental expenses, nets him but 50 cents profit on the transaction. Upon the same transaction the carrier receives as freight something like $100, which, allowing 60 per cent for operating expenses, would net him a profit of $40.

It can hardly be argued that the requirements of the proposed legislation will prevent the carrier from earning a legitimate income on his capital, or, indeed, affect his income to any material extent.

The argument that the criminal penalties imposed are unconstitutional is fanciful. While a maximum penalty is fixed, a nominal penalty is permissible. Moreover, the acts which are made criminal are clearly defined, and no person not morally guilty can come within the definition.

TABLE A.—*State statutes covering (1) false bills of lading, (2) unmarked duplicates, (3) delivery without surrender of bill.*

[Blanks indicate no provision.]

State (or Territory, etc.).	False bills.		Unmarked duplicates.		Delivery without surrender.	
	Criminal penalty.	Civil liability.	Criminal penalty.	Civil liability.	Criminal penalty.	Civil liability.
Alabama	Not exceeding $1,000, not more than five years.	Carrier liable to any person injured thereby for all damages, immediate or consequential, resulting therefrom.	Same	Same	Same. Property taken from carrier under legal process excepted. Bills marked "Not negotiable" exempted.	Same.
Arizona	Not exceeding five years, $1,000, or both.		Not exceeding five years, $1,000, or both. Excepts property taken by process of law.			
Arkansas	Not exceeding five years, $5,000, or both. Not applicable to bills marked "Not negotiable."	Persons aggrieved have action at law against person or corporation issuing bill to recover damages. Not applicable to bills marked "Not negotiable."	Same	Same	Same. Surrender not required where property replevied or removed by operation of law. Carrier may take valid bond in place of surrender.	Same.
California	Not exceeding five years, $5,000, or both.		Not exceeding five years, $1,000, or both.			
Colorado						
Connecticut						
Delaware						
District of Columbia						
Florida	Issue of false vessel bill to defraud insurer punishable by fine or imprisonme t.					
Georgia						
Idaho						
Illinois						
Indiana						
Iowa	False vessel bill to defraud insurer punishable by fine or imprisonment.					
Kansas						
Kentucky						
Louisiana	Not exceeding $5,000, or five years, or both.	Persons aggrieved have action at law for damage sustained.	Same	Same	Same. B/L stamped "Not negotiable" exempted. Does not apply to property replevied or removed by operation of law.	Same.

Maine	False vessel bill to defraud insurer punishable not more than 10 years or not exceeding $5,000.					
Maryland	$1,000 to $5,000.	B/L conclusive evidence in hands bona fide holder for value without notice that goods actually received, notwithstanding fact otherwise and agent had no authority to issue except for goods actually received.	$1,000 to $5,000 against corporation; $100 to $5,000 against individual; one to three years.		$1,000 to $5,000 against corporation; $100 to $5,000 against individual; one to three years.	Unsurrendered "Order" bill continues as outstanding obligation to same extent as if goods not delivered and carrier liable for delivery of goods to any person or subsequent hold for value without notice.
Massachusetts	False vessel bill to defraud insurer: State prison not more than ten years; jail not more than two years; fine not more than $5,000.					
Michigan	Not exceeding $2,000, three years, or both. False vessel bill to defraud insurer: State prison not more than five years; county jail not more than one year, or not exceeding $5,000.					
Minnesota	Not exceeding one year, $1,000, or both.		Not exceeding one year, $1,000, or both.			
Mississippi		Every B/L conclusive evidence in hands of bona fide holder for value as against person or corporation issuing same, that property received.				
Missouri	Not exceeding $5,000, five years, or both. Bills marked "Not negotiable" exempted.	Persons aggrieved have action at law against person or corporation violating act for all damages, immediate or consequential, sustained. Bills marked "Not negotiable" exempted.	Same.	Same.	Same. Not applicable to property replevied or removed by operation of law.	Same.
Montana	Not exceeding five years, $1,000, or both.		Not exceeding five years, $1,000, or both.			
Nebraska	Not exceeding four nor less than one year.					
Nevada						

TABLE A.—*State statutes covering (1) false bills of lading, (2) unmarked duplicates, (3) delivery without surrender of bill*—Continued.

State (or Territory, etc.).	False bills.		Unmarked duplicates.		Delivery without surrender.	
	Criminal penalty.	Civil liability.	Criminal penalty.	Civil liability.	Criminal penalty.	Civil liability.
New Hampshire						
New Jersey						
New Mexico						
New York	Not exceeding one year, $1.000, or both.		Not exceeding one year, $1,000, or both.		Not exceeding one year, $1,000, or both. Does not apply to bills marked "Not negotiable," or when property demanded by virtue of legal process.	
North Carolina						
North Dakota	One to five years, not exceeding $1,000, or both.		One to five years, not exceeding $1,000, or both.		One to five years, not exceeding $1,000, or both. Not applicable to bills marked "Not negotiable," or when property demanded by virtue of process of law.	
Ohio	One to four years					
Oklahoma	Not exceeding five years, or $1,000, or both.		Not exceeding five years, or $1,000, or both.		Not exceeding five years, or $1,000, or both. Not applicable to bills marked "Not negotiable," or where property demanded by virtue of process of law.	
Oregon	False vessel bill to defraud insurer, six months to three years.					
Pennsylvania	Not exceeding $1,000, or five years, or both. Bills marked "Not negotiable" exempted.	Persons aggrieved have action at law against persons violating to recover all damages sustained. Bills marked "Not negotiable" exempted.	Same	Same	Same	Same.
Rhode Island						
South Carolina						

South Dakota	One to five years, not exceeding $1,000, or both.		One to five years, not exceeding $1,000, or both.		One to five years, not exceeding $1,000, or both. Not applicable to bills marked "Not negotiable," or when property demanded by virtue of process of law.
Tennessee					
Texas					
Utah					
Vermont					
Virginia					
Washington					
West Virginia					
Wisconsin	One to 3 years, or not exceeding $1,000.		Same		Same. Property acquired by legal process exempted.
Wyoming					

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